Medicinal Marijuana: The Mechanics of Utilizing State Initiatives For Drug Policy Reform

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Carroll College

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The Mechanics of Utilizing State Initiatives
For Drug Policy Reform

An Honors Thesis Submitted to
The Department of Political Science
And International Relations

CN Stoflet
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This thesis for honors recognition has been approved for the Department of Political Science and International Relations.

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For you, Dad
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Introduction

General elections allow voters to decide the men and women who will set public policy in Washington D.C. and state capitols across the country. Increasingly, general elections allow voters to express their views on a wide variety of topics through the use of state-level, direct-lawmaking processes, such as the initiative, referendums, and amendments to state constitutions. As there exists no national initiative provision, ballot initiatives are conducted at the state level. In the twenty-four states that allow the use of the ballot initiative, constitutional amendments or statutes proposed by the people are placed directly on the election ballot and then submitted to the people for approval or rejection.

The ballot initiative process has seen great growth during the last two decades. With over three hundred separate initiatives during the 1990s, this direct lawmaking tool has seen a great increase in interest, usage, and criticism. Of these 300, around 145 of them passed, as the success rate jumped 10% from the 1980s and 1970s. The initiative growth of the 1990s also experienced an expansion in the scope of public policy issues covered or coverable by a ballot initiative. For example, an initiative of the 1990s and the future might propose a property tax rate freeze, the ban of partial-abortions, the absolution of affirmative action, and the legalization of marijuana for medicinal use.

Although ballot initiatives are covering a wide array of social, and often controversial, issues, one of the most provocative is the legalization of marijuana for medicinal use. These ballot initiatives conflict directly with federal consensus and laws concerning the medicinal use of marijuana. The federal consensus on marijuana during the early and middle 1990s focused on resistance to change in drug policy and the continuance of the War on Drugs. Both the Congress and President Clinton expressed their disapproval of allowing the use of marijuana for recreational or medicinal purposes during 1996. Still, states are able to place medicinal marijuana initiatives on the ballot,

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4 Matthews, Jon, “Three Former Presidents Denounce Marijuana Initiative,” The Sacramento Bee,
and, most interestingly, have them succeed.

The 1996 general election produced the first two drug policy initiatives. These initiatives, Proposition 215 of California and Proposition 200 of Arizona, focused on the use of marijuana for medicinal purposes. Proposition 200 also required parole and drug treatment as an alternative to incarceration for persons convicted only of personal possession of controlled substances for the first two offenses. Both initiatives were highly controversial in each state and experienced high levels of opposition from the state and federal political establishments. President Clinton, as well as former Presidents Bush, Carter, and Ford, spoke out against the initiatives and asserted federal drug enforcement policies would remain in effect. Still, the initiatives passed with significant margins of victory.

After the success of the California and Arizona initiatives, reformers within other states focused on passing similar initiatives allowing the use of marijuana for medical purposes. To date, the following states have successfully passed initiatives during the 1998 and 2000 general elections that allow the use of marijuana for medicinal reasons: Alaska, Colorado, the District of Columbia, Maine, Nevada, Oregon, Washington. Hawaii is the lone state to pass a law through its legislature permitting the medicinal use. Drug policy has further been reformed through the use of initiative regarding sentencing in California, Oregon, and Arizona, reducing the amount of time served for the first two offenses or utilizing other available remedies, such as rehabilitation or incarceration for offenders.

Interest in medicinal marijuana initiatives continues to grow. These initiatives are increasingly controversial, as powerful organizations clash with the political establishment, accomplished scientists, and conservatives. These organizations may differ in mission statements, members, and funding, but they arguably share one common goal: pass medicinal marijuana initiatives in any state where success is probable.

This paper aims to discuss the history and evolution of the initiative process, the medicinal marijuana debate, and the mechanics of successful medicinal marijuana initiatives. To provide an analysis of the mechanics, a comparison between states that

October, 30, 1996. (Hereafter cited as Matthews)

Matthews
have previously passed such popular legislation and of a state that actively uses the initiative process will be conducted. Drawing on case studies of successful marijuana initiatives, this paper aims to identify prominent characteristics and processes evident and assess them against a state to determine the probabilities of initiative placement and success.

This paper will utilize the case studies of California's Proposition 215 and Oregon's Measure 67 as a foundation for the analysis. California is of importance as it was one of the first states to use a medicinal marijuana initiative and the organizations active in Proposition 215 continue to be frontrunners in the future planning and implementation of the marijuana initiatives. The Oregon case study discusses the growing industrialization of the initiative process, the role of the Californian organizations, and the continued importance of paid signature collectors, media relations, and endorsements.

The Western state of Montana will be used for analysis and assessment purposes. Montana continues to expand the use of the initiative, has a well-defined initiative process, and is increasing the scope of public policy issues covered by initiatives. Montana has covered controversial initiatives before, such as a ban on cyanide leach mining and the phase-out of existing game farms, but has yet to deal with medicinal marijuana through the ballot initiative. As reformers seek new states for medicinal marijuana initiatives, the existence of prominent factors is indicative of selection, placement, and success.

The paper is set up through the use of chapters, with each discussing a major aspect of the paper. The first chapter outlines a history of the ballot initiative process and its evolution as a populist tool of direct lawmaking in the states. The chapter concludes with a brief discussion of the status of initiative process, outlining the broad social areas that are dealt with or could be covered by a ballot initiative.

The second and third chapters deal with the prohibition of marijuana and the recent and ongoing research into its medicinal value. The second chapter describes the history and reasoning behind the federal prohibition of marijuana for recreational and medicinal use. This chapter also discusses the logic behind a continued proscription. Drawing from this logic, the third chapter begins with an analysis of marijuana as a
dangerous drug and summarizes the data detailing the effects of consumption. The last half of this chapter looks at the current scientific research concerning the medicinal benefits of marijuana.

The fourth chapter is a case study of California Proposition 215, which legalized medicinal marijuana in 1996. The case study focuses on the political system of California, the evolution of the initiative process in California, and Proposition 215. The chapter looks at the organization involved, the sponsorship, the legal administrative requirements, the advocacy in the media and advertisements, and other highlights of Proposition 215.

The fifth chapter looks at the state of Oregon and its successful Measure 67 in 1998. The case study of Oregon focuses on the same areas as California, specifically the evolution of the initiative in Oregon, the political establishment, and Measure 67. The Oregon case study also discusses the various legal challenges against the use of the initiative, both during the initiative’s formative years and in the last decade.

The sixth chapter looks at the state of Montana. This chapter discusses the initiative process and its evolution. A major focus of this chapter is how the initiative process is expanding, as broader social issues are increasingly dealt with.

The concluding chapter brings together the histories, evolution, and case studies to assess the key mechanics of a successful medicinal marijuana initiative. Relying on these mechanics and comparative analysis, this chapter measures the probability of placement and success of a medicinal marijuana initiative in Montana. The chapter also identifies areas of future research and concern.
Chapter One
The Initiative: Birth and Evolution

After the Civil War, the political landscape and culture of many states changed as the system responded to the newly franchised, increased immigration, and increased western movement. Many states in the Midwest, West, and South were controlled by political machines or business monopolies. As the influence of these groups grew with their economic power, party politics often fell victim. Citizens found it difficult to find responsive members of government and many were alienated from voting.6

In the late 1800s, reformers sought to circumvent monopolistic influence at the state level and promote self-rule through the use of ballot initiatives. These reformers, which included the People's Power League, sought to incorporate the use of initiatives and referendums into state constitutions. The initiative process was a product of the Progressive Era, and many individuals focused their political energy to the formation and implementation of ballot initiatives. The initiative wave caught momentum and many prominent national figures joined the effort. These figures included Samuel Gompers, Eugene Debs, and William Jennings Bryan.7

The initiative movement met strong resistance from politicians and industries in the East and the South. However, states of the West and Midwest were successful with Nebraska and South Dakota passing laws to allow ballot initiatives in 1897 and 1898 respectively. In the West, Oregon allowed ballot initiatives in 1899 and was the first state to vote on initiatives in 1904. Oregon voters passed two initiatives during that year, one to hold primary elections for candidates of state office and the other to allow local ordinances to place a ban on the sale of liquor. Many of the other initiatives followed Oregon's path and used the initiative for similar laws. The success of the initiative caught attention and, by the 1920s, twenty states had passed similar initiative statutes.8

The initiative was complemented by the increased use of the referendum, which

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7 Ibid.
allowed a state’s legislature to place items up for vote on the general election ballot. Many states that permitted the use of initiatives included the use of referenda. The referendum had the central theme that made the initiative so popular, the voters had direct control over the passage or failure of a measure.9

The initiative and referendum wave waned with the advent of the Great Depression and World War II. The majority of states that adopted the initiative and referendum were in the West. Some states in the Midwest and Northeast, such as Michigan and Massachusetts, also adopted the processes. As the Klu Klux Klan gained prominence and Jim Crow laws became the norm, no state in the South adopted the use of the initiative or referendum.10 The initiative fervor further dropped after World War II. No states during the 1940s and 1950s adopted the use of the initiative and the number of referenda and initiatives on state ballots decreased. The stale period lasted until the early 1970s, when activists again sought to reform the representative government.11

During the late 1960s and early 1970s, the federal government seemed unable to control high inflation and the rising costs, both economic and social, of the Vietnam War. The Vietnam War became the foundation for large anti-government demonstrations. The uncovering of the Watergate scandal and the shock of the Kent State shootings increased the wariness of the distrustful public even more. Following the same path of the 1890s, many voters turned to their state and local governments and sought control through the initiative and referendum.12

The initiatives used during the 1970s and 1980s focused on the two primary areas of state property and income taxes along with a broad and varied range of social issues. The area of states taxes became increasingly important to voters, as many states turned to higher property taxes and income taxes to hedge their shrinking budgets. A watershed for the initiative occurred in California, in 1978, with the passage of the highly publicized Proposition 13.13

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9 Ibid.
11 Ibid.
12 Ibid.
Proposition 13 was championed by Howard Jarvis, and passed with 65% of the vote. Proposition 13 required future California tax increases to receive a two-thirds approval in the legislature. The extensive reaches of Proposition 13 gave it national attention and Massachusetts followed in 1980 with its property tax reform, Proposition 2 1/2.\textsuperscript{14}

During the Reagan administration, the use of initiatives for tax reform decreased as the administration and Congress passed tax cuts. The Reagan administration's economic policy became rooted in the defense industry as Reagan pushed for the development of the Strategic Defense Initiative and fostered the largest increase in military spending in history.\textsuperscript{15} The federal government also sponsored the use of nuclear power as a safe alternative to traditional sources. The sponsorship initiated the popular Nuclear Freeze movement of the early 1980s and peaked in 1982 when 11 states placed similar anti-nuclear initiatives on the ballot.\textsuperscript{16} The height of the anti-nuclear initiatives occurred in Washington with its passage of Proposition 394. This law stopped the proposed construction of five nuclear power plants throughout the state. Proposition 394 was significant as the proposed builder of the plants was a state agency and voters successfully halted the construction.\textsuperscript{17}

The success of the populist initiatives during the 1980s and the economic policies of the Bush administration expanded the range of issues that initiatives and referenda considered during the early 1990s. At the onset of a short recession, the Bush administration pushed through many defense and social entitlement budget cuts coupled with tax increases. Bush's actions had an impact on the use of initiatives, as the increased taxes revived the use of tax initiatives to lower state taxes. Also, the budget cuts resulted in the reformation of the welfare system, Medicare and Medicaid, and school funding and transferred much of the appropriation functions of the programs to the state. Faced with an economic crisis, some states adopted controversial social programs to balance their

\textsuperscript{14} Ibid.
\textsuperscript{16} Ibid.
\textsuperscript{17} Ibid.
budgets. Examples of this are Oregon's rationing system of health care and Mississippi's denial of funds to abortion clinics that did not offer counseling and other preventative services.\textsuperscript{18}

The tax-focus initiatives included the Nevada and South Dakota versions of the Californian Proposition 13.\textsuperscript{19} California moved further in its tax reform initiative with Proposition 218, which required a majority of voter approval to implement general, not just property, tax increases. Oregon also proved a progressive tax reformer as it considered Measure 46, which would have required a majority of registered voters to approve new taxes.\textsuperscript{20} Montana was more successful, with voters narrowly approving Constitutional Initiative 75, which requires voter approval of new taxes or tax increases. The initiative provides that "no new tax or tax increase may be enacted unless first approved by a majority of the electorate voting on the measure in the geographic area subject to the tax."\textsuperscript{21}

During this time, many social issues were focused at the state-level. Initiatives became an option for such issues as health care, the environment, and the medical field.\textsuperscript{22} These state-level initiatives concern controversial issues that federal consensus was difficult to obtain or continually wavered between countervailing sides. One issue that transferred from the federal legislature to the initiative is that of term limits. During the 1996 general election, fourteen states placed similarly worded term limit initiatives on the ballot.\textsuperscript{23} The movement was in response to the 1995 reversal by the United States Supreme Court of twenty-three state statutes regarding term limits.\textsuperscript{24} Of the fourteen states, nine were successful and five failed. Of those failing were Montana, Oregon,
North Dakota, Oregon, Washington, and Wyoming.\textsuperscript{25} Another related initiative drive was campaign finance reform during the 1996 general election. Six states were successful in placing finance reform on the ballot through initiatives.\textsuperscript{26} Again, the federal government had been ineffective in this arena and the state legislatures had been slow to respond to growing public concern. All of the initiatives except California’s Proposition 212 passed.\textsuperscript{27} These initiatives generally placed strict limits on the measures and amounts candidates could acquire and use for their campaigns.\textsuperscript{28}

Environmental initiatives were also prevailing in the 1996 and 1998 general elections.\textsuperscript{29} Environmental initiatives often involve restrictions on businesses that are dominant in the state’s industry or on issues that have strong interstate influences. Environmental initiatives differ when it comes to the power and influence placed against such initiatives. These initiatives had clearly definable supporters and opponents, with each side well funded and able to reach the public of that state.\textsuperscript{30} The opposing side often consists of out-of-state corporations and trade groups that flood the state’s media with advertisements. These messages are countered by the advertisements and actions by national and state environmental groups such as Green Peace and the Sierra Club.\textsuperscript{31}

Environmental initiatives illustrate the influx of managed campaigns, corporate sponsors, and the extensive use of the media. These initiatives are well funded and managed by the large corporations and groups that have an economic and/or social interest in the issue.\textsuperscript{32} Some states, such as Montana, have responded by passing statutes and initiatives that prohibit corporations from directly funding a campaign for or

\textsuperscript{27} Ibid.
\textsuperscript{28} Ibid.
against a voter initiative.

State ballot measures have also dealt with the federally protected medical procedure of abortion during the 1996 and 1998 elections. The abortion initiatives are well funded and managed. Instead of having a profound economic impact on industries, the sides of the debate draw on and place strong moral beliefs into the campaign. In 1998, Colorado placed two abortion restrictions on the ballot, one banning partial-birth abortions and the other requiring parental notification. The abortion-related initiatives are extremely close, with most experiencing a margin of victory less than 5%.35

Other areas that have moved into the initiative front are those of homosexual rights, affirmative action policies, the encouragement or prohibition of gambling, and the use of the death penalty. All of these areas are managed and funded by the strong views on both sides. Once a social issue has been placed on the ballot, other states often follow in their own versions of the initiative. This becomes more evident when the supporters of an initiative are successful.36

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Chapter Two
The Federal Prohibition of Marijuana

*Cannabis sativa*, commonly known as marijuana, has been used by people for medical and recreational reasons for over 5,000 years. The use of medicinal marijuana sparked much interest in the Western world, and during the 19th century, many scientists conducted research. From 1840 to 1900, over 100 reports were published in American medical journals on the medical applicability of marijuana, referred to then as Indian Hemp. Indian Hemp was cited in these reports as a useful remedy for muscle relaxation, headache relief, sedative, and appetite stimulant.

Indian Hemp was administered to the patient via a dropper that dispensed the drug in an alcohol solution. During the early 1900s, marijuana dropped out of favor in the medical community based on high unreliability during administration through an alcohol solution. Alternatives to marijuana, such as aspirin and barbiturates, were more successful in treatment and able to be synthetically produced. Still, the recreational use of marijuana increased greatly throughout the nation during the 1920s.

Recreational marijuana was federally prohibited with the passage of the Marijuana Tax Act of 1937. The act was heralded by Harry Anslinger, the first director of the Federal Bureau of Narcotics, which later became the Drug Enforcement Agency. The act required anyone producing, distributing, or using marijuana for medical purposes to register with the federal government and to pay a tax, thus making the medicinal use of marijuana more expensive and less attractive than alternatives. In 1942, marijuana was removed from the U.S. Pharmacopoeia because of its believed addictive effects.

Marijuana was established as a Schedule I drug with the passage of the Controlled Substances Act of 1970. This act created five schedules of illicit and prescription drug classifications. By being a Schedule I drug, marijuana was classified as having a high

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38 Ibid. 12-14
potential for abuse, producing harmful side effects, having no current accepted medical use in treatment within the United States, and lacking an acceptable level of risk for patient safety under medical supervision. The classification also restricts most research on marijuana and places it in the tightest control category. Drugs such as cocaine and morphine are less tightly controlled, belonging to Schedule II classification that carries plausible medicinal uses.40

In 1985, the federal government officially recognized that the principle active ingredient in marijuana, delta-9tetrahydrocannabinol (THC), has medical use. The Food and Drug Administration (FDA) has allowed for the production and distribution of synthetic drugs that emulate or contain THC. The best-known THC prescription drug is Marinol, manufactured by Unimed Pharmaceuticals. The required testing and research to substantiate THC as medically beneficial has been sponsored corporately, with the FDA allowing the synthetics to be on the prescription market.41

The FDA approval of THC for medical purposes was expected to result in the rescheduling of marijuana as a Schedule II drug. Still, the expectation never materialized, and instead the Public Health Service, the parent executive agency of the FDA, instituted a program that allowed seriously ill patients that did not respond to Marinol access to marijuana. The program, named the Investigational New Drug Program, allowed for sufferers of cancer, glaucoma, and other illnesses to petition the FDA and receive protection from prosecution by the DEA.42

This program was in effect for less than a decade, when the Public Health Service abandoned it in June 1991. Although the decision was controversial, many in the executive branch cited the need for consistency in enforcement of drug policies. The phase out of the program coincided with the highly publicized compassionate applications by AIDS patients. Although the FDA had been generous in its approval rates, it cited the lack of research to justify any continued use. Additionally, the Bush and Clinton administrations supported the termination of the program.43

The DEA has not wavered on its policy and enforcement of marijuana as a

40 Ibid.
42 Ibid. 8-10
Schedule I drug. The agency has long cited that marijuana contains over 400 chemicals that are detrimental to the human body or are unknown in the medical community. The agency argues that all research regarding marijuana has been inconclusive in stating any medicinal benefits or uses. It also cites that it has been proven that marijuana increases the heartbeat, causes short-term memory loss, and leads to cancer if it is smoked.44

In 1992, Representative Barney Frank introduced House Bill 912, the Medical Use of Marijuana Act.45 The bill sought to legislatively move marijuana to a Schedule II drug and make it available for physician prescription. Although the bill received initial support, it subsequently was defeated.46 The federal government has yet to make any other progressive moves on the medicinal marijuana front, except to voice its disapproval in words and actions. One action was the passage of the Barr Amendment on July 29, 1999 in response to the apparently successful District of Columbia initiative allowing the use of medicinal marijuana. The Barr Amendment, which prevented the District from finalizing the vote count, states:

None of the funds contained in the Act may be used to conduct any ballot initiative which seeks to legalize or otherwise reduce penalties associated with the possession, use, or distribution of any Schedule I or any THC derivative.47

The voice of the federal government is embodied by the agency Partnership for a Drug Free America (PDFA). The agency produces media advertisements that focus on the dangers of illicit drugs and tools available to parents to open the lines of communication with their children about drugs. PDFA is against the legalization of any illicit drug and states that marijuana has no known medical benefit. PDFA also states that medicinal marijuana initiatives are sponsored by individuals that want to legalize and/or decriminalize the use of illicit drugs:

The possibility of millions more of our kids using drugs makes legalization morally indefensible...It [medicinal marijuana] involves people who want to

43 Ibid.
46 Ibid.
radically change drug laws in America.⁴⁸

The restrictions posed by the Controlled Substances Act of 1970 makes any research study of marijuana by a federal agency or body almost impossible. The only legal source of marijuana for clinical research in United States is the National Institute on Drug Abuse, which often rejects FDA-sponsored research proposals. This void produced six different state-sponsored clinical studies on the medicinal benefits of marijuana. The six studies involved more than 1,000 patients and determined that smoked marijuana was an effective remedy for nausea. The studies also stated that smoked marijuana was more effective than the Marinol administered to the patients.⁴⁹

By 1996, legislature in 34 states and the District of Columbia passed laws that recognized the therapeutic value in marijuana, with 23 of these laws still in effect today. Faced with the growth of state initiatives, the federal government has responded by stating that it will still enforce all applicable drug laws against offenders.⁵⁰ This renders many of the state initiatives questionable, and in the case of the Arizona initiative, invalid and null.⁵¹ A patient and doctor using marijuana for the treatment of nausea from chemotherapy will not be prosecuted by the state but both parties could face federal prosecution.

Chapter Three
Marijuana the Drug and the Medicine

Marijuana is the most often used illegal drug in the United States. Recreational use of marijuana is high because the psychoactive effects of THC, most often cited by users, such as a decrease in stress, heightened senses, general ease, and an increased appetite. Recreational users of marijuana often smoke the drug to gain the effects of THC. Users of marijuana roll loose marijuana into a cigarette, called a joint, smoke through a water pipe, a bong, or by insertion into cigarettes and cigars, called a blunt. Recreational users, to a lesser extent, have put marijuana into baked goods and hot beverages such as teas.

The short-term and long-term effects of recreational marijuana use have been long studied by scientists. Although many of the long-term results are challenged and inconclusive, many short-term results are generally accepted. These effects include: problems with memory and learning, distorted perception with sensory functions, especially sight and sound, trouble with thinking and problem solving, loss of motor coordination, an increased heart rate, and a loss of ambition.

Decreasing marijuana use has been a main objective of the War on Drugs, fearing that users of marijuana are likely to progress to more addictive drugs. Government surveys on drug use have shown a gradual decline in recreational drug use throughout the late 1980s, but a general increase has occurred since about 1992. The number of adults using illegal drugs at least once in the past month is estimated at 14.8 million during 1999 compared with 23.3 million in 1985, along with a decrease in adolescent drug experimentation. General drug attitudes have not changed significantly throughout the past two decades.

Most of the drug control efforts focus on drug education and limiting the access
and supply of drugs. The success of the Drug War has been much debated in the last
decade, but prohibition of illegal drugs will likely continue at the federal level, reflecting
the attitudes of public surveys and bureaucrats. Illegal drugs carry the public perceptions
of increased crime, apathetic teenagers, and harmful addicts. Still, a growing majority
of Americans favor research on illegal drugs, and favor the use of drugs for medicinal
purposes. In particular, it is estimated that 70% of Americans favor the use of marijuana
for medical reasons if clinical studies provide for beneficial results. This split brings
the traditional views of marijuana and the development of marijuana as a powerful
medicine into conflict.

The National Institute on Drug Abuse opened the federal government to the
research of marijuana for medicinal purposes in 1997 when it asked the Institute of
Medicine (IOM) to conduct a review of all scientific evidence available pertaining to
marijuana and to independently assess any potential benefit marijuana may have. The
report, released in August 2000, created a large public response but has yet to be used in
any federal drug policy reviews or modifications.

Much of the medical research from the 1970s and early 1980s did not fully
incorporate the role of cannabinoid receptors, how and which cells THC affected, and the
general areas of the brain that cannabinoids affected. Since the discovery and subsequent
understanding of the receptors, science has advanced greatly and the potential costs and
benefits of medicinal marijuana can be characterized and further studied. As of now,
general conclusions about the use of cannabinoids are available.

Drawing on the report, some of the conclusions widely agreed upon in the
medical and scientific communities focus on the general areas of the human physiology
that are affected or use cannabinoids. Most of the current research deals with the most
abundant cannabinoid in marijuana, THC, but limited research has produced similar
conclusions for the second most abundant cannabinoid in marijuana, Cannabidiol.
Cannabinoids have a natural role in pain modulation, control of movement, and memory,
with the human brain developing a tolerance to repeated use.\textsuperscript{60}

The report also states that animal research demonstrates the potential for dependence and when withdrawal symptoms are experienced, they are modest when compared to opiates or benzodiazepines, such as Valium. Human research on dependency and withdrawal are similar, with noted physical and psychological dependency. Still, more human research must be conducted to confirm or disaffirm these initial findings.\textsuperscript{61}

Cannabinoids, with THC in particular, have potential therapeutic value when remedying the symptoms of pain, nausea and vomiting, and loss of appetite according to the IOM. THC has been shown to help patients manage and control nausea associated with chemotherapy and the drug cocktails most often used to combat AIDS. The effects of cannabinoids vary individually and they are generally modest and temporary in their relief. There exists the potential that a small number of patients will not respond at all to marijuana, a noted condition among all medications. The use of cannabinoids has yet to be tested in many areas of medicine and it may be only well suited in those situations as a complement to other therapies.\textsuperscript{62}

Research also points to defined, purified cannabinoid compounds as having a more stable and measurable response. This concerns the various compounds found in the plant form of marijuana, where uncertain compounds may exist with differing strains or variations of the plant. Pharmaceutical companies have experienced limited success in creating these compounds and, with a continued demand, it is likely that cannabinoid-based drugs with manageable side effects will be developed. This likelihood also removes the volatile chemical stability of plant forms where moisture, sunlight, temperature, and storage all modify the levels of THC.\textsuperscript{63}

Another conclusion of the IOM is that marijuana and cannabinoid-based drugs are not completely benign substances and that consumption carries the possibility of unwanted reactions and side effects. The most definable and damaging side effect of use is the possibility of cancer when the user consumes it through smoking. Since smoking is

\textsuperscript{60} Ibid. 19-25  
\textsuperscript{61} Ibid. 20-25  
\textsuperscript{62} Ibid. 24-28  
\textsuperscript{63} Ibid. 51-55
the most used method of consumption, many of the adverse effects are from the inhalation of burning plant materials and contaminants that are held in the lungs and airways. If smoked chronically, use will likely result in abnormalities in the cells lining the human respiratory tract, significant lung damage, and problems during and after pregnancy. Second-hand marijuana smoke has proved similarly detrimental.\(^{64}\)

The IOM research documents that acute marijuana use leads to diminished psychomotor performance. This effect is most comparable to the use of alcohol. A lesser effect is dysphoria among first-time users and the elderly. This dysphoria is generally experienced in terms of unpleasant feelings of anxiety, paranoia, and a loss of control. Acute marijuana use has also been linked to short-term memory loss, although no definite study exists to date.\(^{65}\)

The chronic effects of cannabinoid use are not yet widely accepted and more research must be conducted. One chronic effect that has been widely documented is the psychoactive dependency on the effects of THC, in that a small number of users become addicted or dependent on the drug.\(^{66}\) There exists no conclusive evidence that marijuana use leads to experimentation with other illicit drugs. Some previous studies have shown with striking results that users of marijuana are more likely to use other drugs. The studies have been criticized for making false connections, based on class and status, and citing marijuana as a gateway drug. These criticisms point out that marijuana is the most-used illicit drug and its use among drug users does not necessitate a transition from marijuana to other drugs. These previous studies also focus on the recreational use of marijuana and it is yet undetermined what effect the medicinal use of marijuana has on the use of other drugs.\(^{67}\)

\(^{64}\) Ibid.
\(^{65}\) Ibid. 80-91
\(^{66}\) Ibid. 104
\(^{67}\) Ibid. 125
Chapter Four

California: The State, the Initiative, and Proposition 215

California the State

Politically, California has often acted as a bell-weather state, whereby legislation or trends that originate there transcend around the country. This has occurred in areas of tax reform, education reform, and drug policy reform. Among the most debated issues are those concerning taxes, immigration, and racial politics. All three of these combine with the state’s never-ending dilemma over budgetary constraints, illegal immigrants, and growing diversity. California is a Democratic state with over seven million registered Democrats.

California has been among the most active in the use of the initiative, with high numbers during the 1910s and increasing numbers during the 1990s. California is arguably the most evolved in the use of the initiative, with sophisticated government administration, well-funded interest groups, signature-collection firms, and a growing arena of what the initiative process can render. Most recently, California brought national attention with its initiatives concerning the abolishment of bilingual education (Proposition 207), denial of state services to illegal immigrants (Proposition 187), and the ending of affirmative action (Proposition 209).

California and the Initiative

California adopted the use of the initiative and referenda in 1911 and became the 10th state in the union to bring lawmaking directly to the voters. The initiative was in response to growing public concern that special interests and railroad barons exerted too

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69 Ibid.
71 Boyd, Rebecca, “84 Years of Initiatives in California,” The Sacramento Bee, August 4, 1996
much control over the state government.\textsuperscript{73} The newly elected reformist governor, Hiram Johnson, campaigned on a platform to stop the economic influences in his government. Johnson expressed support for the Progressive Era reform of the initiative, and cited the influence of the Southern Pacific Railroad to gain popular support. Johnson delivered on his promise, and in a special election on October 10, 1911, a measure was placed on the ballot allowing voter initiatives. The measure passed easily, with 168,744 voting in favor and 52,093 against.\textsuperscript{74}

The measure stated that to place a statutory initiative on the ballot, 5\% of the signatures of registered voters who voted in the last gubernatorial election was required. For a constitutional initiative, the required signatures raised to 8\%. The proposition is then presented to the Secretary of State as a petition for signature verification. The proposition is placed on the ballot at the next general election held.\textsuperscript{75} The governor may call a special statewide election for a measure. The measure also provided for an indirect initiative. Under this, the legislature had 40 days to approve or reject a proposed amendment to the state constitution. If the legislature failed to act within this time period, the proposal automatically was placed on the ballot. The indirect initiative was seldom used and repealed by the legislature in 1966.\textsuperscript{76}

In 1912, three measures made the ballot covering the issues of permitting the merging between city and county governments, a ban on bookmaking, and allowing local governments to raise money.\textsuperscript{77} Fifteen initiatives made the state ballot in 1914, most covering social issues. Examples of the issues are Proposition 2, which would have prohibited the manufacture and sale of liquor, Propositions 3 and 45 which sought to limit the amount of hours in a workday, and Proposition 13 which would have limited those who could vote on bond issues. The primary issue of the 1914 initiatives concerned the regulation of alcohol, with three separate measures either prohibiting it or suspending the prohibition. Of the fifteen, five initiatives passed, most notably the abolishment of

\textsuperscript{75} Ibid.
\textsuperscript{76} Allswang, John.
the poll tax and suspension of any liquor prohibition until 1916.\textsuperscript{78}

After the fervor of the 1914 elections, World War I dominated the political interest of Californian voters from 1916 to 1918. During these two elections, only nine initiatives were placed on the ballot, with three successful. Again, prohibition was the dominant issue. The three initiatives that were successful established regulations on the interest charged on loans, a change in property tax law, and laws barring a legislator from holding more than one public office.\textsuperscript{79}

The 1920s saw a rebirth in the use of the initiative, with 35 initiatives placed on the ballot. Ten of the initiatives passed, and covered a wide range of social issues. Kindergartens were added to the public school system in 1920, aid was granted to veterans in 1922, and an environmental measure to protect the Klamath River in 1924. The protection of the Klamath was the first successful environmental initiative in California, and it blocked dams on a 175-mile stretch of the Klamath River. The use of initiatives decreased in the late 1920s as the Great Depression advanced.\textsuperscript{80}

During the 1930s, social issues, with the exception of alcohol regulation, dropped out of favor. Most of the 35 initiatives during this decade were bureaucratic in nature, redefining the mechanics of government administration. In 1930, initiatives sought to create a Fish and Game commission and to change voter registration laws. In 1934, five initiatives were successful in changing government administration in all three state branches. These changed the nomination method for state judges, defined the duties of the state attorney general, changed defendant rights on evidence in criminal cases, gave a felony defendant the right to a speedy court appearance, and restricted civil service promotions to those based on a merit system.\textsuperscript{81}

The 1940s saw a decrease in the use of the initiative. Only 19 initiatives reached the ballot, with the most placed during 1948. The initiatives during this time dealt with mainly administration and tax issues. Six of the initiatives dealt with sales and use taxes

\textsuperscript{77} Boyd, Rebecca.
\textsuperscript{78} Ibid.
\textsuperscript{79} Ibid.
\textsuperscript{80} Ibid.
\textsuperscript{81} Allswang, John.
and the amount of aid granted to the elderly, the poor, and state teachers. Two other initiatives attempted to set up a state medical board and a state housing agency. On the social front, no initiative was successful, but ballot initiatives did attempt to ban job discrimination, protect the San Francisco bay from commercial fishing, and allow local governments to regulate alcohol independently.

The 1950s and 1960s saw little activity in initiatives as California experienced an economic boom. Only nineteen initiatives were posted on the ballot during these two decades. Eight initiatives dealt with budgetary concerns, primarily the repealing personal and property taxes. Only five initiatives were successful during this time. Of those, only one was of social concern. In 1964, the state could not regulate discrimination in housing. This measure coincides with the national Civil Rights movement.

In 1978, the California initiative gained new life with the passage of Proposition 13. Proposition 13 passed in June 1978 as the only measure on the ballot. Proposition 13 enacted strict new limitations on property tax bills. Howard Jarvis and Paul Gann organized the initiative. With its success, property holders received a tax break and the state and local governments were forced to revise their budgetary systems. Proposition 13 reinvigorated the initiative process in California and produced waves of new interest in many other states. Reflecting on the impact, Joel Fox, president of the Howard Jarvis Taxpayers Association states:

There's no question that Proposition 13 brought it roaring back to life because of its dramatic impact. It touched a core with Americans all across the country because 13 blazed across like a prairie fire that went from west to east.

After the renewed interest, the initiative process during the 1980s exploded with 44 initiatives making the ballot. The early initiatives of the 1980s dealt primarily with

82 Boyd, Rebecca.
84 Ibid.
85 Boyd, Rebecca.
87 Stanton, Sam. “California Voters Lay Down the Law at the Ballot Box-Routinely,” The Sacramento Bee,
tax issues, including a repeal of the inheritance tax and an adjustment of the income tax brackets for inflation. With social issues increasingly reaching the ballot, a nuclear weapons testing ban passed in 1984. Also in 1984 were initiatives ending bilingual ballots and permitting a statewide lottery. As the 1980s drew to a close, the initiatives covered more controversial social issues, denoting English as the official state language (1986) and AIDS legislation, including quarantining anyone infected with the communicable disease (1986) to requiring AIDS testing on all sexual offenders and making the results public (1988).88

The Californian Initiative Today

The procedural requirements of placing an initiative on the Californian ballot today are overseen by Secretary of State’s office.89 This office is highly active in compiling and presenting election, candidate, and voter information through its production of various guides. The Initiative Update is an electronically accessible information database presenting the voter with information on the progress of all initiatives filed with the Secretary of State pertaining to their standing in the filing requirements. Additionally, the Initiative Guide covers all aspects of petitioning and placement for voter initiatives.90

To be placed on the general election ballot, the supporters of an initiative must prepare the text of the proposed law and submit it to the Office of Legislative Counsel. The Counsel reviews the legality of the proposal and estimates the possibility of the initiative reaching the voters. The supporters are allowed to seek the assistance of the Counsel, or they may seek private counsel. If the Counsel deems the text and possibility of consideration to be sufficient, the text is officially recorded.91

The supporters then submit the text to the Attorney General and request a title and summary. The Attorney General alone prepares these and submits them to the Secretary

August 4, 1996.
88 Friedrich, Barbara.
90 Ibid.
91 Ibid.
of State, the supporters, the Senate, and the Assembly. The supporters are allowed to file amendments to the summary, although these are subject to review before inclusion. If the Attorney General deems that the initiative has a potential fiscal effect, the initiative is required to be reviewed by both the Department of Finance and the Joint Legislative Budget Committee. Both of these prepare a fiscal analysis to be included with the title and summary.92

After successful filing, the supporters are allowed to circulate petitions for signature. The format of the petition is standard and the Secretary of State sets the filing requirements for the signature collection, although it usually exceeds 100 days, given that it falls within at least 131 days before the statewide election. The required signatures of the initiative depend on the nature of the initiative with 5% for statutory or 8% for constitutional of the total number of votes cast in the last gubernatorial election. For the 1998 ballot, this figure stood at 693,230 for a statutory initiative.93

The supporters are allowed to compensate signature collectors, and the collectors must tell anyone who signs the petition that they are paid. Only registered, qualified voters may sign the petitions and there are many guidelines on the acceptable methods used. Once signature collection is complete, all petitions are filed for verification with county election officials. Sampling is used to verify, and all of the counties report to the Secretary of State upon completion. If verified, the petition is deemed filed and qualified officially by the Secretary’s office.94

The supporters, in addition to any opponents, are then allowed to directly campaign for the initiative. Financial disclosure is a strict requirement in California, with both sides required to file pre-election and quarterly statements. Through these statements, both sides must disclose any contributor donating more than $1000 and describe campaign activities and organization. These filings aim at preventing excessive spending and establish accountability in that the voter is informed of the financial

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92 Ibid.
93 Ibid.
94 Ibid.
supporters of an initiative. The reports are widely available in print form and are accessible online via the Secretary of State's pages.

The Voter Information Guide and Ballot Pamphlet is printed by the Secretary of State's office and is offered as an unbiased guide to educate the voters. The Pamphlet is sent to each registered voter and is available in various government offices. It includes information on each candidate for public office at the state and federal levels, statements of positions from registered political parties, and information on each of the initiatives placed on the general election ballot. The introduction of the guide states:

It includes a brief summary of the measures, arguments for and against each measure, analyses of each measure by the legislative analyst and the entire text of the proposed laws.

The initiative process evolved into an industry during the 1990s. California became home to many of the signature collection firms in the United States. With the growing popularity of initiatives, some of these firms expanded into initiative consulting firms, where supporters could have the firm handle all the required state filings, signature collection, polling for voter targeting, public relations, and legal aspects. The firm of Winner, Wagner, and Mandaback is one of the most noted, playing a large role in many initiatives in California and other states, such as Missouri, Colorado, and Oregon.

With the growth of specialization and organization, the costs of a successful initiative have grown exponentially. A study by the Public Policy Institute of California released in 1998 reports:

Total spending hit $127 million in 1988, dropped to $49 million and $45 million in 1992 and 1994, respectively, and then peaked at an all-time high of $140 million in 1996.

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95 Ibid.
The study also cites the increase in the use of firms and the formalization of the process in California:

The initiative has more often been used by well-organized political and economic entities...[These] interest groups, backed by media consultants, direct mail specialists, pollsters, usually finance the costly signature drives to get measures on the ballot, and the advertising campaigns that put them over—or that block the measures of opponents.⁹⁹

This formalization has even led to competition among the initiative consulting firms. During 1998, the Californian firm, Progressive Campaigns, guaranteed the collection of the required 690,000+ signatures for a 'plausible' initiative for a fee of $1.2 to 1.7 million dollars.¹⁰⁰

The commercialization of the voter initiative and the growing breadth of controversial issues covered resulted in a backlash from legislators, political scientists, and citizens during the late 1990s. The state response of raising the required financial filings was more symbolic than practical, and the backlash gained national attention. An article in *Tikkun* illustrates:

The disturbing thing about California's recent ballot initiatives is not simply that they clothe laws in fake legitimacy, but that they are manipulated by elites...[It] threatens democracy by eschewing a representative system constructed in some small part to protect those with the least influence—immigrants, gays and lesbians, racial minorities, and the poor—from factions with undue money and power.¹⁰¹

Although the state legislature and various country and state officials have publicly reacted to the growing concerns, no limiting legislation or administrative rulings have been effectively enacted. One of the more prominent calls came from the California Constitution Revision Commission, a state committee that urged the following three options late in 1996 through its report published in the news media:

⁹⁹ Ibid.
One would require that proposed amendments to the state constitution be voted on only during the general election in November, something that might increase voter participation in such measures.

Another calls for the Legislature to be able to make minor, clarifying changes to measures that pass.

But the third and potentially most controversial suggestion would give the Legislature the power to amend initiatives six years after they have passed as laws. 102

In addition to the government stalemate, any restrictions are likely to be challenged in the state and federal court systems. Drawing on previous court rulings, corporate funding and other activities are likely to be protected by the Bills of Rights. 103

Proposition 215

Proposition 215 was placed on the General Election ballot of November 5, 1996. There were over 700,000 signatures on the petition, with paid signature collectors. 104 The Ballot Title posed to voters was:

Medical Use of Marijuana: Initiative Statute.

- Exempts patients and defined caregivers who possess or cultivate marijuana for medical treatment recommended by a physician from criminal laws which otherwise prohibit possession or cultivation of marijuana.

- Provides physicians who recommend use of marijuana for medical treatment shall not be punished or denied any right or privilege.

101 Ibid.
102 Stanton, Sam, “Politicians renew calls to redo initiative process,” The Sacramento Bee, August 6, 1996.
103 Ibid.
• Declares that measure not be construed to supersede prohibitions of conduct endangering others or to condone diversion of marijuana for non-medical purposes.

• Contains severability clause.

Fiscal Impact: Probably no significant fiscal impact on state and local governments.

A YES vote on this measure means: Person with certain illnesses (and their caregivers) could grow or possess marijuana for medical use when recommended by a physician. Laws prohibiting non-medical use of marijuana are not changed.

A NO vote on this measure means: Growing or possessing marijuana for any purpose (including medical purposes) would remain illegal.105

The initiative passed with official results of 55.58% (5,382,915) in favor and 44.42% (4,301,960) opposing.106

The initial authors and activists of Proposition 215 were Dennis Peron and Anna Boyce.107 During 1996, and subsequently, a controversial image surrounded Peron, stemming from his criminal record and repeated public calls for the legalization of all narcotics. At the beginning stages, Peron established credibility through his connection with the largely popular medical pot club, Cannabis Cultivators' Club, in San Francisco. Although illegal and repeatedly raided, Peron managed the club with almost no regard for state and federal authorities.108 Peron had been arrested 15 times on marijuana charges and after drafting the text of the ballot measure, publicly stated he believes “all marijuana use is medical.”109 The initial public response was withdrawn, with the opposition quickly gaining credibility.

106 Ballot-Propositions
107 Ibid.
109 Ibid.
Peron’s club had operated for years, despite violating state and federal drug laws. In August 1996, state drug agents raided it, seizing 86 pounds of pot and $62,000. “The club was running a sophisticated illegal drug distribution network,” said a spokesman for California Attorney General Dan Lungren. A grand jury indicted Peron, and he awaits trial on felony drug charges.110

The initial fervor that surrounded Peron soon decreased, and the opposition seemingly curbed public interest and involvement in the proposition. Peron was unable to gain financial support, and his loose organization’s activism, Californian’s for Compassionate Use, waned. “As the deadline neared, Peron and his unorganized group of volunteers had collected only 40,000 [signatures].”111 When the collection deadline neared and seemed impossible, the new organization, Californians for Medical Rights, entered the scene. With financial funding, credibility, and coordination, the group would foster the initial success of Proposition 215.

Peron’s initiative never would have made it to the ballot without the help of Soros, Lewis and Sperling. That is when Ethan Nadelmann of Soros’s Lindesmith Center stepped in. He helped create Californians for Medical Rights, a sophisticated campaign organization that pushed the medical-marijuana initiative. Soros and Lewis poured $400,000 into the group, which paid professional signature gatherers who, in 90 days, obtained more than 700,000 signatures.112

The other chief petitioner, Anna Boyce was the initiative’s compassionate proponent. A retired nurse and widow, she appealed to wary voters in her heart-felt speeches surrounding the death of her husband. “She talks of seeing the drug work with her late husband, a straight-arrow former Elks Club member, who turned to cannabis to ease the nausea caused by chemotherapy for lung cancer.”113

Ms. Boyce knew the political system and had extensive lobbying experience stemming from 1994 to 1996. She lobbied lawmakers to introduce bills that allowed for

110 Ibid.
111 Ibid.
112 Ibid.
the medicinal use of marijuana, and was successful with the bills introduced by John Vasconcellos.\textsuperscript{114} "For two straight years, Boyce and her allies pushed medical marijuana bills through the Legislature with bipartisan support, only to see them vetoed by Governor Pete Wilson."\textsuperscript{115}

Many media commentaries and articles placed Ms. Boyce in a benevolent light, countering the negativity surrounding Mr. Peron. Before and after the entrance of Californian's for Medical Rights, Anna continued to be a down-to-earth supporter, being active in public rallies, speeches, and press releases. In Ms. Boyce's own words: "These are dying people. It's insane not to give them something that helps."\textsuperscript{116}

The primary organization financially supporting Proposition 215 was Californians for Medical Rights, a program of the Lindesmith Center. California for Medical Rights was organized and well funded when it entered the petitioning process. Throughout the campaign, the organization served as the umbrella for the support effort. In the last pre-election filing with the Secretary of State, the organization declared receiving $2,225,478 in contributions with the largest contributions from organizers of the Lindesmith Center, George Soros ($550,000), Lewis Peter ($500,000), and John Sperling ($260,000), among other activist groups.\textsuperscript{117}

Californians for Medical Rights paid for the signature collectors and breathed financial life into the initiative campaign. The organization made advertisements, fliers, and voter pamphlets for distribution and lead the management of press conferences and public rallies. During the end of the initiative campaign, Californians for Medical Rights matched statements against the proposition with announcements of new advertising campaigns: "[Californians for Medical Rights] announced the statewide airing of three television ads in which a doctor, a nurse whose husband died of a cancer and a woman who battled breast cancer make personal appeals for voter support."\textsuperscript{118}

\textsuperscript{114} Bailey
\textsuperscript{115} Ibid.
\textsuperscript{116} Ibid.
\textsuperscript{118} Matthews
Californians for Medical Rights became the chief spokesperson for Proposition 215 through its use of advertisements and bumper stickers that illustrated a “Yes” vote with a check box. Television advertisements appealed to both the medical and compassionate sides.

It [Californians for Medical Rights] had launched three television ads containing personal accounts of how marijuana had eased the side effects of cancer chemotherapy. In one ad, San Francisco cancer specialist Dr. Richard Cohen describes how he has seen marijuana help patients deal with severe side effects of chemotherapy, including loss of appetite.”  

Californians for Medical Rights furthered the spokesman position through George Zimmerman, founder of the Men’s Wearhouse clothing chain. Zimmerman served as the concerned professional during the initiative campaign. He pushed for more action, debated public officials, and gave commentaries to the media. Zimmerman also served as a mediator between the grassroots groups that supported Proposition 215. After the August 4, 1996, raid of Peron’s marijuana club, some grassroots groups called for Peron to resign from the campaign personally. One such group was the Southern Californians for Compassionate Use.

Southern Californians for Compassionate Use founder Scott Imler said Dennis Peron and John Entwistle ‘have enough on their hands’ dealing with expected state criminal charges connected with an August 4 raid on their Market Street headquarters that resulted in the seizure of 150 pounds of marijuana and $60,000 in cash. Imler said he and fellow advocate Anna Boyce were once associated with Peron’s group but split to form the Southern California organization because they were worried about financial improprieties at the San Francisco office.

Zimmerman responded to the infighting quickly, by releasing a press release, and by holding an interview with The San Francisco Chronicle:

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119 Ibid.
120 Martin, Glen, “Pot Initiative Backers Squabble,” The San Francisco Chronicle, September 5, 1996. (Hereafter cited as Martin.)
121 Martin
“This kind of grassroots infighting on taking credit isn't unusual for these kinds of campaigns,” said Bill Zimmerman, the director of Californians for Medical Rights. “But the fact is, we're the ones who collected all the signatures and raised all the money.”122

Additionally, Californians for Medical Rights served as the chief supplier of credible information through its direct affiliation with the Lindesmith Center. The Lindesmith Center was founded by George Soros, and serves as a non-profit group pushing for opening the debate on drug policy. During 1996, the Lindesmith Center was viewed with wide respect, compiling many scientific studies on its website and making publications available through press releases and voter pamphlets.123 The Lindesmith Center's seemingly neutral stance helped greatly, although its ties to Soros and Californians for Medical Rights would lead to troubles late in the campaign.

The medical community factored heavily in the initiative campaign, as an unbiased supplier of information. Although the initial response was negative, as the Californian Medical Association stated that Proposition 215 had no medical merit, the increased interest lead to more calls for research and growing medical support.124 Proposition 215 gained this support from the AIDS and cancer research organizations both in the state and nationally.125

The AIDS research organizations were the most influential, citing marijuana as an effective medication for use in AIDS wasting and requesting that more studies be conducted.126 Dr. Donald Abrams, director of Community Base, a San Francisco-based AIDS research institution, became one of frontrunners in the medical endorsement.127 Although Abrams did not publicly state his support for Proposition 215, his continuing

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122 Ibid.
124 Matthews
125 Ibid.
127 Ibid.
battles to conduct marijuana studies on AIDS patients was used extensively by proponents.

They contend that the federal government, girded for its war on the drug world, has in recent years stood in the way of significant clinical research into the potential therapeutic value of cannabis. Their prime exhibit is battle between federal drug officials and Dr. Donald Abrams, a noted AIDS researcher at UC San Francisco. Abrams has an eminent international reputation in AIDS research.\(^\text{128}\)

The growing support for Proposition 215 encouraged more medical associations to endorse it and also led to the formalization of AIDS lobbying groups.\(^\text{129}\) The Life AIDS Lobby, based in San Diego, contributed $369,750 to the Californians for Medical Rights campaign.\(^\text{130}\)

The key support Californians for Medical Rights has brought in are: Academy of Family Physicians (7,000 doctors), the San Francisco Medical Society (2,200 specialists), the Older Women's League of California and the California Legislative Council for Older Americans. These organizations demonstrate the wide appeal of Prop. 215 in the medical community and in a key, voting constituency -- senior citizens at high risk of cancer, glaucoma and other diseases for which marijuana can be a useful part of treatment.\(^\text{131}\)

Marijuana clubs also factored in the success of the initiatives, through the large numbers of customers and endless media coverage. The most known clubs, the Cannabis Clubs of San Francisco and Los Angeles were run by Dennis Peron and Scott Imler respectively. Media coverage of the public rallies held at the clubs was extensive, with most ending in a dispute between the demonstrators and the police. Peron and Imler were largely presented in the media as martyrs in their defiance of authorities. The marijuana

\(^{128}\) Ibid.

\(^{129}\) Ibid.


clubs came to represent the personal side, much like the speeches of Anna Boyce, and, more importantly, appealed to the compassionate side of voters.\textsuperscript{132} Taken from the \textit{Los Angeles Times}:

Afterward, he [an AIDS victim] shook hands with club founder Scott Imler, who uses marijuana for a seizure disorder. TV cameras rolled. "It's kind of exciting. I always wanted to be a trendsetter," Stone said, estimating that he uses $6,000 to $7,000 worth of prescription medications a month for his illness. In addition, he says, he needs to smoke a gram of marijuana a day to help reduce the side effects of those drugs and prevent nausea so he can eat.\textsuperscript{133}

Also critical in the initiative campaign was the support of large organizations. One such organization was the ACLU, which prepared position papers on drug prohibition, organized public events, and most important, called for ACLU members to vote "Yes" on Proposition 215. The ACLU is a national non-profit organization, founded in 1920, focusing on protecting and promoting the civil rights and liberties of individuals. The ACLU is recognized for its large membership, more than 300,000, and vast political resources, most notably its large legal staff. The ACLU has chapters in almost every state that serve as grass-root operations.\textsuperscript{134}

The ACLU has long been a supporter of drug legalization and added credibility to the supporting side. The ACLU has been publicly against any prohibition of drugs since 1968, citing the violation of personal freedoms. On this violation, the ACLU states:

The American Civil Liberties Union opposes criminal prohibition of drugs. Not only is prohibition a proven failure as a drug control strategy, but it subjects otherwise law-abiding citizens to arrest, prosecution and imprisonment for what they do in private.\textsuperscript{135}

\textsuperscript{132} Ferrell, David and Weikel, Dan, "Measure's Passage Stirs Strong Support and Harsh Criticism," \textit{Los Angeles Times}, November, 1996.

\textsuperscript{133} Ibid.


Another national organization supporting the initiative campaign was the National Organization for the Reform of Marijuana Laws (NORML). NORML was founded in 1970 and has been the leading national advocate for legalization of marijuana for all uses. NORML is the most identifiable organization working for the new legislation on marijuana. NORML has a large membership base and has chapters in almost all states. NORML is well-funded and has many resources including lobbying and advertising efforts.¹³⁶ NORML also served as an information source, and urged members to vote “Yes”. NORML has four offices within the state of California and initiated public rallies and press releases relating to Proposition 215.¹³⁷

Within the state of California, the Libertarian Party was vocal in its support of Proposition 215. The Libertarian Party served as an informative source and called for an end to all drug prohibition. The Libertarian Party urged its members and others to vote for the proposition.¹³⁸ The Libertarian Party added its ideological support: “The Libertarian Party is the only (national) political party that stands against drug prohibition, as it has since our founding.”¹³⁹

The primary opposition of Proposition 215 came from law enforcement agencies and the political establishment. The chief opponent was Citizens for a Drug Free California (No-on-215) whose filings with the Secretary of State indicate a total fund raising effort of $32,547.¹⁴⁰ The director was Orange County Sheriff Brad Gates. Gates attracted media attention and was able to appear in the media frequently, citing the dangers of Proposition 215 and the influx of out-of-state financers. As stated in the Los Angeles Times: “Gates sees a more ominous side to the initiative. He characterizes Proposition 215 as a ‘back door’ effort to decriminalize pot.”¹⁴¹

¹³⁹ Ibid.
¹⁴¹ Bailey
Although the group was substantially smaller than the supporting side, the opposition enjoyed clear lines into the state and national press as well as support from government agencies.

The Food and Drug Administration, the Drug Enforcement Agency, the Drug Czar, and the Partnership for a Drug-Free America all came out against Proposition 215. White House National Drug Policy Director General Barry McCaffrey stated, widely reprinted in the national media: “No medical research has shown marijuana to be safe, effective or therapeutically superior to other substances that have fewer adverse side effects. Furthermore, legal alternatives to the use of marijuana are available.”

Also issuing statements against the proposition were former Presidents George Bush, Jimmy Carter, and Gerald Ford. Their signatures on a letter urged Californians to reject a medical marijuana initiative on the ballot calling the measure an irresponsible “hoax.” Former U.S. Surgeon General C. Everett Koop also stated disapproval in a letter addressed to the Californian voter: “Proposition 215 goes far beyond that limited goal and could allow unlicensed physicians to offer marijuana for even minor health complaints in prisons and in the workplace.” The opposition focused primarily on the need for more research, the message sent to children regarding marijuana, and attacked the financers.

The case study of California presents key mechanics for the placement and success of a medicinal marijuana initiative. California and Proposition 215 demonstrate the need for initial planning, the importance of organization and collaboration with national organizations, and the importance of a public campaign strategy focusing on advertisements, professional endorsements, and compassionate narratives by medicinal marijuana users. The study also presents the importance of a defined initiative procedure that facilitates the promoters through the role of the Secretary of State. The following chapter will use the same structure of analysis with the state of Oregon.

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143 Ibid.
144 Matthews
145 Ibid.
Chapter Five
Oregon: The State, the Initiative, and Measure 67

Oregon the State

Oregon has been one of the most active states in voter participation for the general election, particularly the Presidential election. For the 1996 election, Oregon had a turnout of 57% for registered voters compared with a 49% national average.146 Politically, Oregon is a Democratic state with over 770,000 registered Democrats.147

Oregon is one of the most active states that use the initiative process. Recently, Oregon has dealt with a broad scope of social issues through initiatives, including the protection of euthanasia (Measure 57), access to adoption records by adoptees (Measure 58), and restricting tax payer money from political campaign use (Measure 59).148 Oregon produced the greatest number of initiatives and referenda in the 2000 general election, a total of 26 Ballot Measures.

Oregon and the Initiative

In 1902, the Oregon legislature adopted an initiative and referendum constitutional amendment after intense public pressure. The 1902 amendment allowed citizens to file and circulate petitions whose signatures were to be verified by the state. After verification and legislature approval, the citizens were able to place the petition on the ballot. In 1906, the legislature passed a second amendment that eliminated the legislature approval measure and outlined the core referendum and initiative procedures that are used currently. This amendment allows the legislature to propose legislation to the people via referendum or allows citizens to petition and place measures on the ballot without legislative action.149

147 Ibid.
In 1935, the legislature of Oregon passed a statute that prohibited monetary compensation for signature collectors. This statute stood for almost 50 years, until it was reversed in 1983. The 1983 statute allowed for compensation, but the chief petitioners were required to publicly disclose any compensation with the Oregon Secretary of State. This statute is in effect today, with an additional act passed in 1992 that requires paid petition gatherers to carry and present a notification of compensation to all potential signatures.150

After the proper amount of signatures are gathered and filed, the Secretary of State was required to verify enough signatures to prove that at least 2/3 were legitimately signed. This was time consuming, and in 1986, the legislature passed a law that allowed for signature verification through the use of sampling.151

After a petition has been successfully filed, the legislature in 1951 required financial impact statements to be prepared for any initiative or referendum that had the potential to require general fund expenditures exceeding $50,000. The financial impact statements were to be impartial reports on the proposed legislation with explanations for and against the measure available to the public. The 1951 law provided that the statement be prepared by a committee of three, where one member was a proponent, one an opponent, and one a neutral third party.152

Oregon referenda and initiatives have been the subject of court challenges. One year after the 1902 amendment, the initiative was challenged in Oregon court in the case Kadderly v. City of Portland. Kadderly, the plaintiff in the trial, charged that the initiative process violated the US Constitution’s Guaranty Clause. The Guaranty Clause stated that the U.S. Congress guarantee every state a “Republican Form of Government.” Kadderly stated this clause expressly mandated all laws to be made by elected officials and not be a direct vote by the people. The case went to the Oregon Supreme Court and the Court stated that the initiative did not violate the Constitution.153

150 Ibid.
151 Ibid.
152 Ibid.
153 Ibid.
In 1954, Representative David Baum challenged the reapportionment constitutional amendment passed in 1952 on the basis of the Guaranty Clause. The amendment provided that the Oregon Secretary of State had the contingent duty to reapportion the Legislative Assembly if the legislature failed to do so. The case, Baum v. Newbry, preceded to the Oregon Supreme Court and the Court mirrored the federal approach in its opinion:

We are bound by the interpretation placed on the Federal Constitution by the Supreme Court of the United States. This, therefore, being a political matter and not for judicial inquiry, we are powerless to determine whether or not the constitutional amendment before us violates Article IV, section 4, of the Federal Constitution.

Aside from the court challenges and procedural changes, the initiative has been used 277 times between 1902 and 1994. 108 were constitutional amendments with 34 of them approved and 74 rejected. In comparison with other states that use the initiative, these numbers are above average and voter participation and knowledge of the measures are high. Also above average is the success rate of initiatives, with an impressive 61% approval rate compared to a 40% historical national average.

The initiatives focused primarily on tax reform, but social areas have been addressed sporadically. Women’s suffrage was on the ballot four times during the period 1906-1912, and passed in 1912, far before the federal government granted suffrage. In 1922, the Compulsory Education Initiative was passed which mandated that all children attend public schools. Another initiative proposed the prohibition of vaccination procedures. Another popular initiative topic concerns the fishing restrictions on Oregon’s rivers, notably the Rogue River.

The Secretary of State’s office is the chief agency in control of the initiative process and it certifies the petition as a Ballot Measure. Adequate information on each Ballot Measure is a primary goal of the state government, and, in particular, the Secretary

154 Ibid.
155 Ibid.
156 Ibid.
157 Ibid.
of State’s Office. The Office produces many educational aids on the initiative process and offers insight into each measure through the Voter’s Pamphlet, statements of financial impact, and registration guides. All of these publications are widely available to Oregon residents in governmental offices and the Secretary of State’s office has made an interactive and informational website for interested voters.\footnote{Oregon Secretary of State Office, “Initiative, Referendum and Referral Log,” 2000. (Available from http://www.sos.state.or.us/elections/other.info/irr.htm)}

**The Oregonian Initiative Today**

To place a statutory initiative on the general ballot as a statewide measure, the petition must have signatures from registered voters totaling more than 6\% of all votes cast for governor in the last election. For constitutional initiatives, the required signatures increase to 8\%. The petition is then filed with the Secretary of State who verifies the signatures and upon verification, and draws up information regarding the Measure in the widely distributed General Election Voters’ Pamphlet.\footnote{Ibid.}

The Secretary of State compiles the General Election Voters’ Pamphlet. One copy of the Voters’ Pamphlet is mailed to every household in the state and additional copies are available at many state and local governmental offices and all post offices throughout Oregon.\footnote{Ibid.} The Pamphlet is often the chief initial source of information for voters in Oregon.

The ballot title is prepared by the Attorney General’s office and is distributed to a list of parties for public comment. After the office reviews any comments submitted, it certifies the title. After certification the ballot title can be appealed by parties opposing or supporting the initiative and can only be changed by the Oregon Supreme Court.\footnote{Ibid.}

A committee of state officials including the Secretary of State, the State Treasurer, the Director of the Oregon Department of Administrative Services, and the Director of the Department of Revenue, prepare the statement of financial impact for each ballot measure. The statement is released by the Secretary of State’s office and is

\footnote{Ibid.}
available to the public for review. The statement is impartial and does not have arguments for or against the measure. Thus, the statement estimates only the direct financial impact on state and local governments, based on information presented to the committee.\textsuperscript{162}

The explanatory statement is a 500-word impartial statement explaining the measure and is included in the Voter Pamphlet. A measure’s explanatory statement is authored by a committee of five members, including two proponents of the measure, two opponents of the measure, and a fifth neutral member appointed by the proponents and opponents. After the statement is completed, the Secretary holds a public hearing to make any changes based on the suggestions and objections. The committee receives the Secretary’s recommendation and finalizes the statement upon return to the Secretary.\textsuperscript{163}

Citizens or organizations may file arguments to be published in the Voter’s Pamphlet. Space for the arguments are purchased for $500 or by submitting a petition signed by 1,000 registered voters. Arguments in favor appear first in the Pamphlet, followed by the opposition. All arguments are then printed in the order in which they are filed with the Secretary of State’s office.\textsuperscript{164}

A new area of the initiative process that is being commenced by procedural rules is financial campaign reporting. Citing the need for financial disclosure, and modeling the effort after the necessary disclosures for public office, the Secretary of State requires filings of the chief groups to show how money was raised, how it was used, and who contributed it.\textsuperscript{165}

Once a Measure has been approved for placement, both sides begin highly managed campaigns aimed at voters. Ballot Measures are often covered in the news media and although there exists objective pieces, many are of an editorial nature. The management of an initiative campaign in Oregon often mirrors campaigns for public office in that they raise money, tour the state with speeches, and spend large sums of

\textsuperscript{162} Ibid.
\textsuperscript{163} Ibid.
\textsuperscript{164} Ibid.
\textsuperscript{165} Ibid.
money on advertising.

The primary source of information for voters regarding a Ballot Measure was historically obtained through the media. The media often proposed objective pieces on the measures, followed by editorial pieces included in largely respected news outlets, such as the *Oregonian*. The media’s role has changed in Oregon throughout the increased use of the initiative in the 1990s. It is now common for a controversial initiative to reach voters through sponsored advertisements by the proponents or opponents. This role transition has also caused the media to focus primarily on those issues that have the most advertising or are the most controversial, regardless of the initiatives impact. This is seen by the high coverage of the Oregon Citizens’ Alliance’s anti-gay rights measures and the various environmental initiatives that effect large industries versus the decreasing coverage of property tax initiatives.166

Campaigns increasingly implement the use of paid signature collectors. Of the 16 Measures posed in 1994, 14 utilized paid signature collectors and, in 1998, nine of the ten initiatives used them. Concern over this trend has prompted the legislature actions noted above. Still, it is unlikely that paid supporters will be barred, as most court rulings state that campaign contributions and the use of them are protected as a freedom of speech.167

Public interest in the initiative process has been increasing throughout the 1990s in Oregon. Studies have shown that public discussion of initiatives equals or exceeds discussion of political office campaigns. Radio talk shows and voter groups have greatly increased their input in the initiative process. Some talk shows of the larger cities, such as Portland, devote an entire segment to a controversial initiative.168 Voter groups, such as the League of Women Voters, have prepared general statements on Ballot Measures and distribute them to members via advertisements and interactive websites.

A current backlash to the initiative is being experienced in Oregon.169 Concerns over the increased use, the high amounts of money spent, and the seemingly

168 Mapes, Jeff.
contradictory actions of some passed initiatives have revived calls for restrictions of the amount and types of voter initiatives allowed in Oregon. This is evident as the total number of initiatives placed on the 2000 general election ballot totaled 26, with only two legislature-sponsored referenda. Many in the state political establishment and a growing number of citizens fear the passage of laws that do not serve the general good.\textsuperscript{170}

The worries of the political establishment are based on the increasing importance of money in the initiative process and the results of most tax and budgetary initiatives. Well funded special interest groups utilize paid signature collectors to gain the necessary signatures and spend large sums on advertising. Since the media is prone to report from the advertisements, a misinformed or under-informed public could approve a publicly damaging initiative.\textsuperscript{171}

\section*{Measure Number 67}

Measure Number 67 was placed on the general election ballot of November 3, 1998 after successful petitioning and verification. There were 97,648 signatures on the petition, with paid signature collectors, and the Secretary of State verified 77.30\%.\textsuperscript{172} For an initiative to be placed on the ballot in 1998, there needed to be 97,681 signatures for a constitutional amendment and 73,261 signatures for a statutory amendment.\textsuperscript{173} The Ballot Title posed to voters was:

Measure 67 Allows Medical Use of Marijuana Within Limits: Establishes Permit System. A “Yes” vote allows medical use of marijuana within specified limits; establishes state-controlled permit system. A “No” vote retains Oregon criminal, civil forfeiture law prohibiting possession, delivery, and production of marijuana.\textsuperscript{174}

\textsuperscript{170} Ibid.
\textsuperscript{171} Ibid.
\textsuperscript{173} Ibid.
\textsuperscript{174} Oregon Secretary of State Office. “Certified Ballot Title Measure 67,” September 16, 1998. (Available from http://www.sos.state.or.us/elections/other.info/80cbt.htm)

The initiatives chief petitioners were Ms. Stormy Ray and Dr. Richard Bayer, a retired Portland physician.\footnote{Ibid.} Both were active members in the social group, Oregonians for Medical Rights, and purchased space on the Secretary of State’s website to place arguments in favor of the initiative. According to her argument, Ms. Ray suffers from the degenerating and incurable multiple sclerosis. Ms. Ray did not respond to the powerful pain medications, such as morphine and Demerol, and only became addicted to them. Ms. Ray stated that the only substance that relieves any of her pain is marijuana. The medicinal use of marijuana has returned her “dignity and quality of life.”\footnote{Ibid.}

Ms. Ray concludes her argument by stating that she is now faced with the dilemma of making her pain bearable or being a criminal. She states that she has a lot to live for through the use of marijuana and should not be denied proper care. She expands:

I am not alone. There are thousands of patients like me—people suffering from cancer, AIDS, glaucoma, epilepsy, and a host of other diseases or illnesses that threaten their lives.\footnote{Oregon Secretary of State Office, “General Election Voters’ Pamphlet,” September 16, 1998. (Available from http://www.sos.state.or.us/elections/nov398/guide/m67.htm)}

Dr. Richard Bayer, the second chief petitioner is familiar with the Oregon initiative process. In 1996, he worked as the medical spokesman in the campaign to defeat Ballot Measure 51, which would have overturned the Death with Dignity Act.\footnote{Wentz, Patty, “Dope with Dignity,” \textit{The Willamette Week}, August 12, 1998.} The measure popularized Dr. Bayer and made him a prime supporter for the initiative.

In 1997, he attended a planning meeting for the marijuana initiative with the drafters of the bill, among them state Rep. George Eighmey, who that year had tried to get a similar bill through the Legislature. "They needed a doctor who is not afraid of being politically active to tell the truth," he says. He agreed to sign on as chief petitioner--along with a multiple sclerosis patient, Stormy Ray--and as chief spokesman for the initiative.\footnote{Ibid.}

Dr. Richard Bayer’s entrance into the campaign increased the debate, as it became
a battle pitting law enforcement against doctors and their patients. Supporters of the initiatives could not have asked for a better medical spokesman in the debate. As initiative coverage illustrates:

Bayer’s role in the campaign has been central. He has debated the measure on talk radio, spent countless hours giving television and newspaper interviews and asked for support from a variety of special-interest groups. He plans to debate opponents of the measure this fall and says his experience in medical school—being forced to argue the risks and benefits of treatments—makes him particularly suited for that.\textsuperscript{181}

In the Oregon Voter’s Guide, Dr. Bayer states that many of his patients would benefit from the medicinal use of marijuana. He argues that physicians like him should be able to offer all the possible treatments to their patients, and should not and cannot be restrained by outdated laws.\textsuperscript{182} Dr. Bayer uses powerful, sympathetic statements about patients, coupled with a view of a restrained, but willing, medical community. From his argument:

Measure 67 is about the rights of dying and suffering patients. Patients and their physicians should be able to discuss every treatment option. Measure 67 simply allows patients with debilitating illnesses to use a medicine that may help their condition, free from fear of arrest and incarceration.\textsuperscript{183}

Of the eight arguments in favor placed in the guide, six are from members of the group Oregonians for Medical Rights (OMR).\textsuperscript{184} OMR is the chief group that organized and implemented Measure 67 throughout 1998. The group focused on the state of Oregon, but masterfully drew support from national and state organizations in creating a large network in support of the measure. OMR was the representing organization on the Secretary of State’s Explanatory Statement Committee, and remains active to this day in the implementation of marijuana reform.

\textsuperscript{181} Ibid.
\textsuperscript{183} Ibid.
\textsuperscript{184} Ibid.
Oregonians for Medical Rights received its financial support from the Lindesmith Center, under the program Americans for Medical Rights (AMR). AMR is the new embodiment of the group Californians for Medical Rights, the organization behind the successful 1996 Californian initiative. AMR is located in San Francisco, California, and is the best organized and funded program committed to reforming medicinal marijuana through the use of the initiative. In 1998, it led a campaign to place medical marijuana initiatives on state ballots across the country. Although the AMR was to only aid in the collection of signatures in Oregon, the organization spent large sums on advertisements, events, and publications.

After the success of the Measure 67, Bill Zimmerman, Ph.D., Executive Director of Americans for Medical Rights proclaimed:

We won every ballot initiative this year; we won every vote last time. Voters want doctors to make these choices, not General McCaffrey or police officers. It is time to make compassionate medical use available and practical. We’ll implement these initiatives in these states, and will keep winning in more states until national policy is changed.\textsuperscript{185}

Many other national and state organizations were crucial to the success of Measure 67. These organizations not only urged its members to vote yes, but also served as an important educational resource for voters weary of the OMR or AMR. The ACLU purchased space on the Secretary of State’s website and campaigned for the passage of Measure 67.\textsuperscript{186}

The ACLU is active through its state chapter, the ACLUOR. The ACLUOR consists of three regional and two campus chapters that hold monthly meetings for current and prospective members. These chapters serve as grass-roots organizations that build upon and expand the state and national ACLU positions. The ACLUOR publishes guides, holds rallies, and takes advertisements in an effort to educate the Oregon voter.

ACLUOR took an early position on medicinal marijuana in 1998 as Measure 67 materialized. As the interest of Measure 67 increased, the ACLUOR urged its members

\textsuperscript{185} "Every Place We Have Been on the Ballot We've Won," [Americans for Medical Rights Press Release]. \textit{PRNewswire}, November 4, 1998.

and the voters of Oregon to vote yes on the measure. The ACLUOR was also able to draw media attention as it coincided with the national position. The ACLUOR voter guide of 1998 consisted of ACLU positions on national, state, and local public office candidates, and a separate section dealing with the voter initiatives before the state. The ACLUOR voter guide stated its position on Measure 67:

**VOTE YES ON MEASURE 67**

*It's a reasonable response to an unreasonable situation*

Despite mounting evidence that marijuana can help patients with glaucoma, AIDS, cancer, multiple sclerosis, and other conditions, the federal Drug Enforcement Administration continues to block research on the beneficial effects of marijuana. Oregon can't change federal law, but we can decide how state and local law enforcement officials will treat the medical use of marijuana. That's why the American Civil Liberties Union (ACLU) of Oregon helped write Measure 67. And that's why we urge you to support this initiative.

Another national organization that was involved in the promotion of Measure 67 was NORML. In Oregon, NORML is highly present through its Portland chapter, the PDX NORML, founded in 1994. PDX NORML has more than 50 dues-paying members throughout 1998, and several thousand on a mailing list. PDX NORML continually works with its parent organization and other chapters to facilitate the legalization of marijuana. The chapter holds monthly meetings and helps to organize efforts with other groups, publications, and legal support for individuals who are facing prosecution. As PDX NORML states:

PDX NORML is engaged in an ongoing effort to encourage an open and honest public discussion about cannabis-related issues and drug policy in general. In the

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188 Ibid.

course of these efforts, PDX NORML finds itself working to debunk an incredible variety and volume of government and media misrepresentations of fact.\footnote{190}{“Portland NORML’s Mission,” PDX NORML, 2000. (Obtained from http://www.pdxnorml.org/)}

PDX NORML calls itself a “big tent group” and expresses its support for many reform efforts.\footnote{191}{Ibid.} Early in 1998, PDX NORML publicly stated its support for Measure 67 and encouraged its members to vote yes. PDX NORML served as a hub of information for many in the Portland area, as voters went to meetings or accessed their website for arguments in favor of the initiative. PDX NORML designed its website to facilitate these users, and compiled a large list of resources that interested individuals could access. Most importantly, PDX NORML encouraged visitors to contact Oregonians for Medical Rights.\footnote{192}{Ibid.}

Centered in Portland, the Campaign for the Restoration and Regulation of Hemp (CRRH) has been a strong state organization fighting for the reform of marijuana laws. In 1998, CRRH stated its full support for Measure 67, and offered various educational resources to interested parties.\footnote{193}{“Privacy Statement for Campaign for the Restoration and Regulation of Hemp,” CRRH Policy Statement, 2000. (Available from http://www.crrh.org/crrh/policies.html)} CRRH was an important supporter of Measure 67 based on its large active membership and its noted credibility in Oregon. CRRH’s credibility stems from its extensive campaign against Measure 57, as referred by House Bill 3643.\footnote{194}{Ibid.} CRRH issued many publications, lobbied on the state and federal levels, and coordinated with many national groups to fund the effort.

CRRH also helped Measure 67 through the use of its weekly television show *Cannabis Common Sense*. The show is available throughout the Portland metropolitan area and offers viewers the chance to participate in the making of the show either through donations or volunteering. *Cannabis Common Sense* sponsored Dr. Richard Bayer and held a short interview with him, citing the need for the passage of Measure 67. The show aired on September 10, 1998, a crucial time for the initiative. Through these efforts, CCRH has increased the awareness of marijuana in Oregon and encouraged its members to support Measure 67.
Other supporting organizations included the legislative committee of the Ecumenical Ministries of Oregon, which represents more than 1,400 Oregon churches and the Coalition of Black Men.195

Opposition to Measure 67 formed quickly and was centered within the law enforcement and governmental organizations. The opposition was headed by Multnomah County Sheriff, Dan Noelle. Although the opposition could not match the economic resources of the supporters, they were successful in recruiting other organizations and politicians, such as former Presidents Bush, Carter, and Ford.196 These organizations included Oregonians Against Dangerous Drugs, the Oregon Association of Police Chiefs, For Our Children’s Children, and the Christian Coalition.197 The opposition based its argument in the lack of medical research, the confusing message sent to children, and that out-of-state radicals were manipulating the compassion of Oregon voters.

Noelle believes that the law is a way for drug reformers to manipulate the public’s compassion. ‘This is just a way to get a foot in the door to make all drugs legal," he says. He points out that no matter how deeply dedicated to helping patients Bayer may be, he's still acting as the front man for a well-organized drug lobby. ‘People like Dr. Bayer may be perfectly nice, but they are being used,’ he says.198

The case study of Oregon further illustrates key mechanics for the placement and success of a medicinal marijuana initiative. Oregon and Measure 67 demonstrate the importance of organization and collaboration with national organizations, and the importance of a public campaign strategy similar to the one used in California. The study also presents the growing reliance on initiative firms and the importance of outside endorsements by national and regional organizations not directly involved with a medicinal marijuana initiative. The following chapter on Montana will focus on the areas of the previous case studies.

194 Ibid.
195 Wentz, Patty.
197 Ibid.
Chapter Six

Montana: the State and the Initiative

Montana the State

Historically, Montana has been one of the most politically active states. Montana ranks in the top five for the number of registered voters, voter turnout for national elections, and turnout for state and local elections. Politically, Montana is a conservative state, with the west leaning Democratic, and the east Republican. Republicans constitute the majority of state and local political offices.199

Montana is an active user of the initiative process, with an increase in the number and scope of initiative evident through the last decade. Montanan initiatives have focused primarily on tax and environmental initiatives, but social issues are also prevalent with animal rights (Initiative 143) and classification of unlawful threats (Initiative 123). Montana has also experienced national attention with its tax initiative (Constitutional Initiative 75) and the prohibition of corporate contributions to initiative campaigns (Initiative 118).200

Montana and the Initiative

Montana adopted the use of the initiative in 1906, through an amendment to the Montana constitution. The Montana adoption saw its roots in the Populist movement of the late 19th century. Populist governors Robert E. Smith and Joseph K. Toole both pushed for the initiative from 1896 to 1902. Their efforts did not materialize until 1903 when reformer F. Augustus Heinze organized the Anti-Trust Democratic and the Anti-Trust Republican parties. These parties, with the aid of prominent officials, formed a coalition in the state legislature that approved the amendment. The 1906 bill did not include a provision for constitutional amendments through the use of initiative. This changed in 1972, when the provision was passed at the state constitutional convention.201

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198 Ibid.
201 Schmidt, David D. 10.
Montanan voters first used the initiative process in 1912, when all four of the initiatives on the ballot were approved. Three concerned the election procedures of federal, state, and local elections, requiring primary elections to nominate candidates. Also included was the direct election of U.S. senators, a major victory for reformers following the open corruption of the election process in the legislature.\(^{202}\)

Anti-corruption dominated the initiative in its formative years, as powerful mining interests dominated state and local politics. The mining interests were focused in Helena, Butte, and Anaconda, with each city having a powerful copper, gold, or silver king. These kings were not only financially powerful but also proved to be interested in politics and the media. The copper baron of Butte, Marcus Daly, purchased the leading newspapers and used them as political outlets, portraying rumors, hearsay, and prejudices as reliable and objective news. The mining industry's power, although challenged, went unchecked, and during the early 1900s, legislatures and their votes were openly bought.\(^{203}\)

In the 1912 general election, reformers sought to restrict the amount of power Amalgamated Copper Company had in state and local politics. The reformers were limited in their efforts as many of the legislators continued their fiscal allegiance to the mining industry. The calls for reform culminated in the 1920 general election, when Joseph M. Dixon was elected governor. In the same year, voters passed an initiative for a 1.5 million property tax for maintenance of the state university and an initiative issuing $5 million in bonds to fund school construction. Still, Dixon experienced great difficulty with mining industry reform efforts in the legislature and, near the end of the term he turned to the initiative process.\(^{204}\)

Dixon pioneered the taxation of the mining industry, focusing on Amalgamated. During the 1920s, the mining production was about 20 million dollars a year, with the state receiving less than one percent of that in taxes. Dixon and his supporters formulated Initiative 28 in an effort to reform the taxation. The initiative sought not to tax mines that

\(^{202}\) Ibid.


\(^{204}\) Schmidt, David D. 10-15.
produced $100,000 or less, but imposed a tax up to 1% for mines greater than the limit. The initiative qualified for the ballot in 1924. Although Dixon lost the reelection bid, the initiative passed, and the state of Montana received around $300,000 in additional tax revenues in 1925. The initiative fervor continued when, in 1926, voters approved a three-cent-per-gallon gasoline tax to fund road construction.²⁰⁵

There are three categories of Ballot Measures that can either be brought to the ballot by the people or the legislature. These measures affect state law, affect the Montana Constitution, or call for a Montana Constitutional Convention. The Ballot Measures have been small in numbers throughout the last decade, with an average of five placed on a general election ballot. Each ballot usually containing two legislature-imposed initiatives.²⁰⁶

**The Montanan Initiative Today**

To place a voter initiative on the general election ballot, the supporters must file a petition to the Legislative Services Division, which reviews the text and makes recommendations to the sponsors pertaining to the legality and applicability of the petition. The supporters can either accept or decline the recommendations. The supporters then submit the petition to the Secretary of State, who reviews it and forwards a copy to the Attorney General. Both offices examine the petition for legal sufficiency. The Attorney General also orders a fiscal statement from the budget director if the proposed ballot issue has an effect on the revenues, expenditures, or the fiscal liability of the state. If a fiscal note is prepared for the proposed ballot issue, the Attorney General will prepare a fiscal statement to be used on the petition and ballot if the measure is placed on the ballot.²⁰⁷

If both offices approve the petition, it may be circulated for the necessary collection of signatures. To qualify a statutory initiative, the petition must be signed by at least 5% of the qualified electors in Montana, including at least 5% in at least one-third

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²⁰⁵ Ibid.
²⁰⁷ Ibid.
(34) of the legislative districts. To qualify a constitutional initiative, the petition must be signed by at 10% of the qualified electors, including at least ten percent in each of at least two-fifths of the legislative districts. For the 2000 general elections, the numbers needed for a statutory and constitutional initiative were 19,862 and 39,724 respectively. 208

Montana allows for the compensation of signature collectors. After the required signatures are collected, the supporters turn them over to county elections officials for verification. County officials check the names of all signers to verify they are registered voters. In addition, they randomly select signatures on each sheet and compare them with the signatures of the electors as they appear in the registration records of the office. If any of the randomly selected signatures do not appear to be genuine, all signatures on that sheet must be compared with the signatures in the registration records of the office. No sampling is used in the verification process. 209

After verification, the legislature can both repeal and amend initiatives. If the legislature does neither, the text of the measure is drawn and committees are formed to write arguments for and against the issue. The Attorney General drafts the one hundred word explanatory title, fifty word fiscal statement, and the twenty-five word "for" and "against" statements. The petitioner appoints a three-member committee supporting the issue. The governor, Attorney General, President of the Senate, and Speaker of the House of Representatives, appoints a five-member committee opposing the issue. The four appointed persons appoint the fifth member. 210

The Voter Information Pamphlet is the chief initial source of information for voters on Ballot Measures. It contains, for each ballot issue appearing on the ballot, the ballot title, fiscal statement, complete text of the issue, and arguments for and against the issue and any rebuttal arguments. The names of the members of the committees who draft the arguments and rebuttals are also included. The pamphlet is sent by county election

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208 Ibid.
209 Ibid.
210 Ibid.
administrators to all households with active registered voters and is also available at all voting precincts. 211

The Commissioner of Political Practices tracks contributions and expenditures. This office mandates that the supporting and opposing groups file as Ballot Initiative Committees. These Committees file quarterly reports during a non-election year and monthly reports from March to September of an election year stating all contributions and expenditures. These reports are reviewed by the commissioner, and then made available for public inspection. 212

Over the past decade, Montanan initiatives have focused on tax reform and environmental issues. In each election during the 1990s, a tax-related initiative has reached the ballot, either requiring a voter approval or a 2/3 approval by the Legislature for any tax increase. In 1998, this tax initiative variation was successful with Constitutional Initiative 75. 213 Another tax-related initiative was the institution of a statewide sales tax, which failed to pass. 214

Environmental issues have largely dealt with mining regulations and treatment facilities. In 1996, Initiative 122 attempted to place strict water quality measures on existing mines and to prohibit any new mines from using the cyanide-leach process. 215 Initiative 122 gained national attention and was heavily debated in all state media outlets. The advertising expenditures were enormous, with well-funded environmental groups and mining companies battling for the public vote. Although Initiative 122 was unsuccessful, it helped in the passage of Initiative 137 in 1998, which contained the latter part of Initiative 122, the banning of the cyanide-leach process. 216

Montana has also dealt with campaign finance reform, term limits, and minimum wage requirements. In 1994, Montanans tried to limit the amounts that political parties

211 Ibid.
212 Ibid.
214 Ibid.
and individuals can raise and spend on their campaigns through Initiative 118.\textsuperscript{217} Although this initiative failed, it did open the avenue for the success of Initiative 125, which in 1998 banned any corporate contribution to a ballot initiative campaign. In 1996, Initiative 132 sought to limit the terms served by any member of Congress elected by Montanan voters. Also in 1996, Initiative 121 attempted to systematically increase the minimum wage throughout a period of four years.\textsuperscript{218} Additionally in the social arena, Montana has dealt with the classification of unlawful threats (Initiative 123), the repealing of the Montana Retail Motor Fuel Marketing Act (Initiative 134), and the regulation of game farms (Initiative 143).\textsuperscript{219}

As Montana explores its initiative opportunities, the importance of money and the industrialization of the process become increasingly evident. Advertising is the leading expenditure for the supporters and opposition of a Ballot Measure and money concerns have been meet with Initiative 125. Montana continues to increase the scope of the initiative, broadening its reaches and its impacts on the state.

Chapter Seven
The Mechanics of Placement and Success

The Probability of Placement

Discussion the mechanics that have played a significant role in the states of California and Oregon will enable an assessment on the probability of placement of a medicinal marijuana initiative in Montana. These key mechanics for placement are a lack of federal consensus, political involvement, defined initiative process, the voter information pamphlet, court and legislative challenges, initial planning and organization, and paid signature collection. The following section will assess these mechanics of placement and apply them to Montana.

Lack of Federal Consensus

As long as a federal stalemate continues over the use of medicinal marijuana, states, organizations, and interest groups will continue to focus on ballot initiatives. This focus is enhanced by the previous success of medicinal marijuana initiatives, the industrialization of the initiative process, and the continuing support from national organizations, such as the Lindesmith Center.

Political Involvement

Historically, the West has been one of the most politically active regions in the nation. California, Oregon, and Montana stand out as examples of high political involvement in elections, as all have voter turnout in the first quartile for the nation. Initiatives are based on the political interest, activities, and involvement of the citizens in a state. With an increase in political apathy, the use of initiatives decreases, as can be seen in California, Oregon, and Montana, during war periods and the 1950s and 1960s. Public concern and the citizens’ desire to impact state politics are important factors in
determining the degree of initiative use. Currently, the political involvement favor the formation initiatives, with an increase in use being seen in these three states.\textsuperscript{220}

To place an initiative on the ballot, the petitioners do not need broad public support, but only signatures of a percentage of voters. For Montana, this number is less than 20,000 registered voters. Although concern exists when considering the political nature of a state and the outcome of a medicinal marijuana initiative, it will have little effect on the placement. Conservative and liberal states are able to place broad ideological initiatives on the ballot. For example, California favors the Democratic Party, but has placed on the ballot initiatives that abolish affirmative action, deem English the official language, and implement tax cuts. Oregon also favors the Democratic Party, but has placed initiatives that implement tax cuts, lessen logging requirements, and increase penalties for drug offenses. Montana favors the Republican Party, but the conservative nature of Montana should have little impact on the placement of a medicinal marijuana initiative.

\textbf{Defined Initiative Process}

Using the initiative for over or close to one hundred years, California and Oregon have established a clear and effective procedure for the placement of an initiative on the general election ballot. The procedures are outlined well, and are widely available to interested parties. The process is accommodating to these parties, with offices and individuals set up through the state to facilitate and encourage the process. These are evident in California and Oregon through the commitment of the Secretary of State’s office. This office works in conjunction with other offices to aid in the placement in the areas of legality, the required number of signatures, and the formation of the commissions or committees that determine the official wording, title, and argument for and against a proposed initiative.

The process has many established guideposts that encourage the formation of initiatives. Through finance tracking, California and Oregon contribute to initiative organization and planning through the required filings and statements. These states also

\textsuperscript{220} Morgan, Ray and Schauffler, David.
provide lists of registered voters available for the required signatures and the locations of offices that will confirm or verify them. The filing deadlines are readily available in advance, with the promoters able to plan up to one year in advance. These offices also issue press releases of proposed initiatives, and track the status of initiatives on their websites and interoffice correspondence. This commitment serves the promoters twofold, by creating public interest in the initiative and providing free advertising for the promotion. Once a proposed initiative’s text and title have been documented, citizens are able to form opinions and take sides on the issue.

Montana possesses these necessary procedures of the initiative process. Again, the Secretary of State office is at the apex, serving the interested parties and the necessary legal requirements. Financial analyses, text and title wording, and necessary filing deadlines are all available to parties well in advance, allowing for the effective planning and organization of proposed initiatives. Montana, through its long history of initiative use, has evolved into an effective establishment that is at the forefront of initiative fostering. Based on this, Montana is a clear candidate for a medicinal marijuana initiative, with public offices set up to facilitate, and not impede, the initiative process.

The Voter Information Pamphlet

Printed for every general election, and widely available, the Voter Information Pamphlet serves to inform registered voters about public candidates, political parties, and ballot measures. The pamphlet of California, Oregon, and Montana includes a section on ballot measures, an explanation of the initiative process, the importance of the initiative, and the text, title, and arguments for and against each initiative placed on the ballot.221

The guide is fundamental, as it often serves as the most used initial source of information regarding a ballot measure. The pamphlet creates public interest by introducing the initiatives to the electorate, and the promoters are able to outline the basic support for the initiative. The promoters are able to gauge the scope of the opposition,

221 A Voter Guide is printed by almost all states that have the initiative process. Although the guide is not distinctive, it still remains an important process in the placement stage of the process for a medicinal marijuana initiative, as it is used by organizations to gauge the support and opposition.
and are able to adequately plan for rebuttals and advertising strategies during the campaign process. This is made possible by the large time frame between the formation of the committee that creates the text and the arguments, and the date of public availability.

The pamphlet introduces the initiative publicly, and although the supporters and opposition have already begun their campaigns, it reaches the most important individuals, the registered voters. The pamphlet may also serve to aid in the signature collection process, as promoters are able to use it as an unbiased means to win over voters. Montana through the use of the voter information pamphlet is a candidate for a successful placement of a medicinal marijuana initiative on the ballot.

Court and Legislative Challenges

Initiatives are subject to legislative and judicial approval and modification, as provided by the system of checks and balances. This continues the commitment to constitutional laws that do not interfere or supersede established federal statutes or the state and federal constitution. Still, this does not discourage the initiative process and, when a successful initiative is deemed unconstitutional or invalid, it serves as a guidepost for future proposals. Through the many court decisions and legislative implementation, citizens are able to determine the scope of a successful initiative.\textsuperscript{222}

With the great increase in the use of the initiative throughout the 1990s, California and Oregon have experienced a backlash against the initiative and its use. Legislators are the most active in the backlash, citing the costs of implementation and ultimately accepting fault for inadequate or controversial initiatives. Proposals for initiative modification include increasing the required number of signatures, legislative approval, limiting campaign financing, and abandoning the entire initiative process. These proposals are met with strong opposition, with concerned citizens and groups actively campaigning to secure the initiative's future. To date, no limitation has been successfully

implemented. Montana has yet to experience such a backlash, and placement is more likely.223

**Initial Planning and Organization**

Organization and planning of the initiative is fundamental. To meet the statutory requirements for placement, the petitioner must be devoted to the cause and have sufficient resources to accomplish the filings before the deadlines. In both California and Oregon, the founding organizations successfully filed the initiative title and text that gained the public attention. Therefore, these founding organizations are important, as they are able to start the medicinal marijuana initiative.

For Montana, the most likely founding organization is Montana NORML, a state chapter of the national organization, NORML. Headquartered in Missoula, Montana, the group is active in education of marijuana and lobbying for marijuana reform. Montana NORML is also highly active in the medicinal marijuana debate, as taken from their website: “Montana NORML vigorously supports the medical marijuana movement.”224

Montana NORML, with its member base of several hundred and dedication, can conduct the initial [ongoing] planning to bring in public interest, and more importantly, financial support. Montana NORML and its subsidiary, Montanans for Medical Rights, planned on a ballot initiative in the past election year, but due to expenses, it was postponed225. Montana NORML will likely collaborate with its parent, NORML, as the national organization has the necessary funds to start the planning and organization effort. John Masterson, Director of Montana NORML, has stated Montanans for Medical Rights is working currently with NORML, and has been in recent contact with the Lindesmith Center.226 Mr. Masterson and other supporters plan to attend the NORML convention in April, to further establish contacts and establish a base within the

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223 At the current time, the Montana Legislature is considering two bills addressing the initiative procedure in Montana. Senate Bill 397 would change how voter signatures are collected on petitions to qualify law changes for the ballot and Senate Bill 396 would make a similar change to the signature-gathering process for constitutional amendments. For more information, please view: http://www.helenair.com/rednews/2001/04/01/build/montana/6a5.html
reform community. Mr. Masterson also cites a survey done by Montana NORML in 1999. The survey had 400 respondents from all 50 counties, and almost two-thirds stated their support for a medicinal marijuana initiative.

Montana NORML is not expected to be the leading organization through out a medicinal marijuana campaign, but its efforts are critical to bring in the interest of the Lindesmith Center. At this stage, money for medicinal marijuana initiatives comes mainly from the Lindesmith Center. Reformers seeking the Center's financial aid must provide that their efforts fall within certain guidelines, currently medicinal marijuana and decriminalization legislation. Montana NORML will fit these guidelines easily with a proposed medicinal marijuana initiative. Currently, the only organized group seeking financial aid from the Center is Greg Schmid of Michigan, who is trying to place a ballot initiative for the legalization of all drugs in Michigan. The Lindesmith Center has responded negatively thus far:

No legalization initiative has yet led to victory at the polls, and even other drug reform initiatives, such as medical marijuana, asset forfeiture reform, and sentencing reform have generally succeeded only when well-seeded with money, especially in states as populous as Michigan. And the really big money deemed necessary to win such initiatives is only provided by the famous troika of drug reform philanthropists, George Soros, Peter Lewis, and John Sperling, who have made it clear that they consider legalization too far ahead of the political curve to merit funding.

Schmid is aware of the record and wishes the big money would come around, but he tells DRCNet that he expects to do it with volunteers and small donations. And he gives Soros and his ilk credit. "For me or against me, those are the people who made marijuana a word people could hear and not shudder," he said. "If not for

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227 Ibid.
their medical marijuana initiatives, we would still be where we were a decade ago," Schmid conceded.231

The previous programs of the Lindesmith Center, Californians for Medical Rights and Americans for Medical Rights, are now defunct, but the Center remains committed to medicinal marijuana initiatives. The Lindesmith Center currently has two programs that seek drug reform at the state level: the Center for Public Policy and the Lindesmith Center—West.

The Center for Public Policy is focused on advancing ballot initiatives and legislation on drug policy reform matters.232 The Center for Public Policy is closely aligned with the grant programs administered through the Lindesmith Center—West. The Lindesmith Center—West focuses solely on the American West, with open seminars, and grant awards to organizations that are pursuing drug reform at the state level.233 Montana NORML stands to gain financial support from programs based on their mission statements. The Lindesmith Center should continue its pioneering role in Montana, as Lindesmith Center spokesman, Dave Fratello demonstrates:

The group [AMR] is focused on the West because 20 of the 24 states that allow voters to write laws are west of the Mississippi. AMR conducted polls in 10 states concentrating its political efforts this year on those that looked most promising. They are relatively small states [in population], where it is less expensive to conduct a campaign.234

Montana NORML must stress to the Center for Public Policy and Lindesmith Center—West that Montana can foster a medicinal marijuana initiative based on its small population and established initiative process. Montana NORML should be fully aware that a successful medicinal marijuana initiative is not the ultimate goal of the Lindesmith

231 Ibid.
The Center is more interested in keeping the debate alive, and has pledged millions more to states that have lost previous medicinal marijuana initiatives, such as Washington and Alaska. To gain the grants and support from the Lindesmith Center, Montana NORML needs only to prove that it is committed, and that placement is highly probable, both well within reason and expectation.

**Paid Signature Collection**

For an initiative to be placed on the general election ballot, all states with the initiative process have laws mandating the collection of signatures in support of the initiative to prove general voter interest and support. Generally, the signatures must be from registered voters and must reach a number derived by a ratio of votes received from the most recent gubernatorial election. These requirements were established at the implementation stages of the initiative process, and have seen little amendments via the legislature. California, Oregon, and Montana all have similar signatory requirements.

Montana allows for the hiring of collectors or the outsourcing to a collection firm for gathering the required signatures. Montana has yet to experience a backlash against the practice, and many environmental groups have used collection firms during the 1990s. Montana does not require the same staggering signature numbers, as its requirement stands at around 20,000 for the 1998 and 2000 elections. Montana promoters, with sufficient funds, benefit greatly through paid collection, as they rely on the established firms in California and Nevada.

236 Ibid.
The Probability of Success

Based on the case studies of California and Oregon, the following will address the key mechanics involved in the success of a medicinal marijuana initiative. The key mechanics of success are campaign strategy, promoters, outside endorsements, the conservative Montanan, and the opposition. The following will apply these mechanics to Montana and assess the probability of success.

Campaign Strategy

It is likely that the Lindesmith Center and Montana NORML will follow previous campaign strategies, which stress advertisements, speeches, press releases, and open debates. The Lindesmith Center will work with other national organizations, such as NORML, to bring in the planning, polling, and targeting strategies through political consultants. This strategy will likely include the two key strategies: key promoters and outside endorsements.

Promoters

The California and Oregon case studies demonstrate two distinguishing characteristics for the chief promoters of a medicinal marijuana initiative. One promoter is a victim of incurable and debilitating disease and the other is a respected representative of the medical community. This works on two fronts in the campaign for the initiative, sympathy and morality for the victim and respect and interest in the medical professional. The sympathy and morality perspective is targeted as an argument against the conservatives/opposition who would dare to pursue a denial of mercy to the suffering. To those individuals that are uncertain of their stance, the personal narrative is effective as evidence that marijuana can be beneficial. Accordingly, these characteristics are outlined in medicinal marijuana initiative guidebooks that highlight sample responses and press releases.237

237 Thomas, Chuck.
The victims in the California and Oregon campaigns also showed that they had no desire to break the law and had fear and anger towards the authorities and politicians who prosecuted them. It was stressed that the victims had consumed marijuana while it was illegal and only sought a safe harbor through the passage of the initiative. It was claimed that current medicinal users would not change their behavior if the initiative passed, and only looked for acceptance for something that helped live in less pain and anguish.

The victim-promoter played large in the paid campaigns, but they also received extensive news coverage, interviews, and rallies via established and respected media outlets. The victims were human-interest stories, and the media coverage added credibility to the claims. Voters were shown editorials and advertisements of the supporters, but also seemingly objective news coverage. The success was outstanding, and the opposition was limited in their attack of the victims. Their only defense was to express sympathy, followed by the accusation that they were merely pawns in the initiative, being used by big money interests, drug reform radicals, and the libertarian left.

The medical-representative also gained media coverage, although to a lesser extent. The representative was a doctor with no personal vendetta in the campaign, something the opposition would have surely attacked. The representative was respected in their respective area of practice, and had the perfect outwards image: professionally dressed, gray hair, and someone to be trusted. The representative was portrayed, not as a radical, but someone who wanted to help his patients to the best of their ability. The opposition was met with the counterargument of more research to prove their assertions wrong, or to prove the oppositions’ claims. This proved formidable and effective in the campaign. A Montanan medicinal marijuana campaign should strive to gain these promoters.

**Outside Endorsements**

Another important factor in the success of a medicinal marijuana initiative is the support of outside organizations not particularly involved in the medicinal marijuana cause. In California and Oregon, these organizations were the ACLU, the Libertarian Party, the League of Women Voters, and AIDS groups. This outside support urged its
members to vote for the initiatives through advertisements and their respective newsletters. Of particular importance here is each organization voter guides, where the organization places the initiative question in a simple yes or no category, followed by reasoning why members should vote that way. In Montana, outside support is expected to continue by these national organizations.

The Montana ACLU has a membership of around 800 families, with headquarters located in Missoula. The Montanan ACLU has been active in advocating initiatives through its voter guide and urges voters to approve or defeat a ballot initiative. Given the position of the ACLU, a medicinal marijuana initiative will be fully supported. The League of Women Voters of Montana has a membership of around 250 families throughout Montana. The League stresses that it is a nonpartisan political group, but is active in advocating positions on ballot initiatives. The League has been active in support for C-35, which established a tobacco trust fund, Initiative 122, the clean water initiative, and Initiative 125, which prohibited direct contribution from corporation to ballot issue campaigns. Based on the national platform and the past actions in California and Oregon, the League of Women Voters of Montana will support a medicinal marijuana initiative. The Libertarian Party has its headquarters in Missoula, and its membership is statewide. The Libertarian Party has also been active in ballot initiative campaign, supporting CI-75 and CI-27 which were both tax measures. Given the national party platform, the Libertarian Party will fully support a medicinal marijuana initiative.

The Conservative Montanan

Montana is a conservative state with weak political parties and party ties. Republicans hold districts with most of the state’s land expanse and Democratic districts are concentrated in cities and Indian reservations. The state legislature has veered sharply towards the Republicans during the 1990s, with Republican control since 1994. Montana has been characterized as having “political schizophrenia,” where voters have

241 Ibid.
traditionally sent Democrats to Washington D.C., while voting for more conservative candidates at the state and local level.\textsuperscript{242}

Montana voters have weak ties to the state’s political parties, with surveys indicating that Montanans are least interested in party affiliation when voting. In a poll conducted for the 2000 election, the political party of the candidate ranked significantly below the candidate’s stand on issues and the candidates truthfulness.\textsuperscript{243} Montana’s political parties contribute little to campaigns compared with other funding sources, namely individuals and corporations. Because of the lack of organization and funding, Montanan political parties rate in the bottom third of the states in overall strength.\textsuperscript{244} Thus, political parties in Montana are often inept to provide the resources necessary to state and advocate a position on a ballot initiative and party affiliation does not solely indicate how citizens will vote.

The citizens of Montana have a well-established tradition of bypassing the parties and their elected officials by using the initiative to enact directly statutes and constitutional amendments and, more recently, to suspend and then repeal laws enacted by the Montana legislature.\textsuperscript{245}

Since 1994, Montanans have approved seven of the twelve initiatives on the ballot. These seven are arguably liberal in nature, demonstrating the lack of political affiliation when voting. Initiative 118 of 1994 revised campaign finance reform laws for candidates. Initiative 123 of 1996 allowed for civil lawsuits against those who commit unlawful threats or intimidations. In 1998, Constitutional Initiative 75 required voter approval for any new or increased tax at the state or local level, Initiative 134 repealed the Montana Retail Motor Fuel Marketing Act, and Initiative 137 prohibited cyanide process open pit gold and silver mining. In the 2000 election, Initiative 143 prohibited the admittance or approval of any new alternative game farm licenses.\textsuperscript{246}

\textsuperscript{244} Ibid.
\textsuperscript{245} Ibid.
\textsuperscript{246} Montana Secretary of State Office, “Election Results,” Updated March 2001. (Available from: http://www.state.mt.us/sos/Elections/Election_Results/election_results.html)
In a 2000 campaign survey, 48% of the respondents answered that newspaper endorsement and advertisements have a profound effect on how they will vote. This demonstrates the importance of advertising in Montana during the initiative campaign. As seen in California and Oregon, the promoters of the medicinal marijuana initiatives were well funded and able to purchase a significant amount of advertising space. These promoters can be expected to continue this campaign strategy in Montana. Based on weak party affiliation, recent successful initiatives in Montana, and the importance of advertising, a medicinal marijuana initiative will have an opportunity for success.

The Opposition

Based on the case studies of California and Oregon, the Montana opposition to a medicinal marijuana initiative will likely come from religious and law enforcement groups. The opposition should be well-organized, but if the Lindesmith Center joins forces, it will not be able to match the financial strength. The opposition will attack the nature of the Lindesmith Center and will likely take out advertisements stressing that the Center is based out of state. Still, this attack can be overcome, as previous initiatives, namely Initiatives 137 and 143, had similar attacks, but still succeeded. Another attack would be targeted at the conservatives of the state, citing that the medicinal marijuana initiative is a gateway to the legalization of all drugs. This attack would be like the others in California and Oregon, and should be limited in effect given the large resources and the use of the promoters by the Lindesmith Center. In Montana, the opposition will be formidable, but not the sole indicator of a medicinal marijuana initiative’s failure.

The Final Vote

As summarized in Table 7.1, Montana possesses or has the ability to possess many of the key mechanics for placement of a medicinal marijuana initiative on the ballot. Montana NORML has the opportunity to work with national organizations to gain interest, support, and financing. Based on the above analysis, it is highly probable that a medicinal marijuana initiative will be placed on the general election ballot in Montana.

The probability of success in Montana is only moderate, also summarized in Table 7.1. Montana can possess many of the key factors of success, but the success of the initiative is highly dependent on the commitment of promoters and the opposition. The promoters, namely the Lindesmith Center, the ACLU, the Libertarian Party, the League of Women Voters, and NORML are expected to continue their commitments demonstrated in previous and ongoing medicinal marijuana legislation. Still, the initiative will encounter two dominant obstacles, the conservative nature of Montana and a limited opposition. Given the breadth and scope of these obstacles, it is only moderately probable that a medicinal marijuana initiative will be successful.
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Likelihood of Placement: High

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Likelihood of Success: Moderate
selected bibliography


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